



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

## **Purpose**

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

## **1. AUTHORITY**

The TGB and Veteran programs are authorized in Minn. Stat. §§ 16C.16 and 161.321 as amended.

- 1.1 MnDOT may award a preference in the scoring of the proposal of TGB and Veteran businesses; and
- 1.2 MnDOT may set a goal for the use of TGB and Veteran businesses as sub-contractors on this contract.

## **2. ELIGIBILITY**

### **TGB Eligibility**

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

**TABLE OF GROUPS EXPERIENCING DISPARITY IN  
IN STATE OF MINNESOTA PURCHASING & CONTRACTING  
CONDUCTED UNDER MINN. STAT. CHAPTER 16C**  
(Based on the 2009 Disparity Study)

	<b>Professional Services</b>
African American	
American Indian	X
Asian American	X
Hispanic American	X
Nonminority Women	X
Disabled	X

Source: <http://www.mmd.admin.state.mn.us/disparity/orders/table16C.pdf>

Groups eligible as Targeted Group Businesses are marked with an X.

“Disabled” means persons with a substantial physical disability as used in Minn. Stat. §16C.16 Subd. 5(a).

2.3 Contract qualifications and other contract requirements still apply.

**Veteran Eligibility**

2.4 The Veteran program requirements are defined in Minn. Stat. §16C.16 Subd.6a. The business will satisfy Veteran program requirements if it is a certified small business that is 51% owned and operated by:

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

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

2.5 Any other veteran-owned small business verified by the VA as such will also satisfy Veteran program requirements. Verified veteran-owned small businesses may be listed in the Vendor Information Pages database at [www.vetbiz.gov](http://www.vetbiz.gov), or they may provide a copy of the VA-issued notice of verification showing that the business is approved as a

veteran-owned small business. Such notice of verification must be issued within the 24 month period prior to the proposal due date.

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

### 3. PREFERENCE IN PROPOSAL

- 3.1 TGB and Veteran firms will receive a preference of up to 6% in the evaluation of their proposals. The preference will be applied based on the maximum possible score. For example, if a proposal is evaluated on a 100-point scale, the preference amount will be six points. **In order to receive the preference, a proposer must submit with its proposal documents the Preference Form included herein.** Preferences given to TGB and Veteran firms are not cumulative. Thus, a firm will not receive additional preference by virtue of qualifying as both a TGB and a Veteran.

### 4. SUBCONTRACTOR GOALS

- 4.1 If the proposer is an eligible TGB or Veteran, that portion of the work to be self-performed by the proposer will count towards the subcontractor goals for this contract.
- 4.2 If the proposer is not an eligible TGB or Veteran, the proposer must meet or exceed the goals for the use of TGB and Veteran sub-contractors and/or suppliers as a condition of awarding the contract, or demonstrate good faith efforts and be granted a waiver. MnDOT has established the following goals for subcontractors and/or suppliers:

Veteran goal \_\_\_\_\_% TGB goal \_\_\_\_\_%

- 4.3 Only the participation of businesses that meet the eligibility criteria described in section two of these provisions will count toward the TGB or Veteran goals.

### 5. METHODS TO ATTAIN THE SUBCONTRACTOR GOALS

- 5.1 The goal may be attained by:
- 5.1.1 Subcontracting with eligible TGB and Veterans. To prove the existence of such a subcontract, the proposer must submit a signed agreement or a signed affidavit committing it to enter into such a subcontract;
  - 5.1.2 Leasing equipment from eligible TGB and Veterans;
  - 5.1.3 Entering into a joint venture with eligible TGB and Veterans. This joint venture must be approved in writing by the MnDOT Office of Civil Rights prior to the proposal due date;

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

## **6. SOLICITING TGB AND VETERANS**

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

## **7. IDENTIFYING TGB AND VETERAN COMMITMENT RATES**

- 7.1 The proposer must identify, at the time proposals are due, the minimum percentage of TGB and Veteran participation it will utilize on the project if selected. This is the commitment rate. The commitment rate may be used to evaluate good faith efforts by comparison to the commitment rates of other proposers.

## **8. PROPOSER SUBMITTAL OF TGB/VETERAN INFORMATION**

- 8.1 The proposer must identify the efforts it made to meet both the TGB and Veteran subcontractor goals. The proposer must submit the information described in sections 8.3.1 through 8.3.5 as part of the proposal, by the due date identified in the solicitation document. The proposer is required to thoroughly document these solicitation efforts and must justify the rejection of bids or proposals from eligible, qualified TGB and Veterans.
- 8.2 **THE INFORMATION IN SECTIONS 8.3.1 THROUGH 8.3.5 MUST BE SUBMITTED AS PART OF THE PROPOSAL, BY THE DUE DATE IDENTIFIED IN THE SOLICITATION DOCUMENT.**

**Information must be submitted in the manner indicated in the solicitation document. For example, RFP's advertised in the SWIFT system will require electronic submission through the SWIFT system. Pre-qualification**

**Announcements generally require one hard copy with an electronic version submitted on a flash drive or CD sent to a specific MnDOT address. FAILURE TO SUBMIT ALL REQUIRED INFORMATION BY THE PROPOSAL DUE DATE WILL RESULT IN REJECTION OF THE PROPOSAL ON THE BASIS THAT IT IS NON-RESPONSIVE. PARTIAL SUBMISSIONS WILL NOT BE CONSIDERED.**

8.3 The proposer must either (1) identify TGB and Veteran participation sufficient to meet both the TGB and Veteran goals; or (2) request a waiver of either, or both, of the goals as described in 8.3.2 below. The proposer must submit the following documents as part of the proposal:

8.3.1 **If the proposer meets the established goals for both the TGB and Veteran programs**, it must complete and submit only the following forms as part of the proposal by the proposal due date:

- Bidders List
- Exhibit A Form for each TGB and Veteran (see 8.3.4 below)

8.3.2 **If the proposer does not meet the TGB goal, Veteran goal, or both, it must apply for a waiver from the goal requirement(s) it did not meet.** The commissioner's procedure for granting a waiver requires that the proposer demonstrate good faith efforts to meet the goal(s) as outlined in section 11. If, after making adequate good faith efforts, the proposer is unable to obtain sufficient TGB or Veteran participation to meet the goal(s), the commissioner will determine that TGB or Veteran firms are not reasonably available to meet the goal(s) and will grant a waiver. The waiver will apply to the difference between the proposer's commitment rate(s) and the amount of the goal(s). Failure to request a waiver by the proposal due date will result in rejection of the proposal on the basis that it is non-responsive.

8.3.3 To submit a waiver request, the proposer must complete and submit the following good faith efforts documents by the proposal due date:

- Request for Waiver Form
- Bidders List
- Exhibit A form for each TGB and Veteran firm (see 8.3.4 below)
- Certificate of Good Faith Efforts
- Good Faith Efforts Affidavit
- Additional information to demonstrate the unavailability of TGB or Veteran firms, consistent with section 11 of these provisions,

8.3.4 The proposer must submit a separate **TGB and Veteran Business Description of Work and Field Monitoring Report (Exhibit A)** form for each TGB and Veteran business it proposes to utilize on the project. Each Exhibit A form *must*

*be accompanied by proof of commitment to use the TGB or Veteran business, such as copies of signed agreements, affidavits, or letters of intent. These commitments will be used to determine the "commitment rate" (the percentage of TGB and Veteran business participation). The proposer must commit to using the proposed TGB and Veteran businesses for not less than the percentage of the participation specified on the Exhibit A form. A proposal will be deemed a non-responsive if it fails to include an Exhibit A form for each TGB and Veteran firm along with the required signed agreements or affidavits.*

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

## 9. FAILURE TO SUBMIT INFORMATION

- 9.1 If the proposer fails to submit the information required by the previous section, the proposal is non-responsive and MnDOT will reject the proposal. **All required information must be submitted as part of the proposal by the proposal due date.** The information submitted must state the proposer's commitment to use TGB and Veteran firms for not less than the commitment rate.

## 10. TGB OR VETERAN AS PRIME

- 10.1 A TGB or Veteran that submits a proposal as a prime contractor will be deemed to have met either the TGB or Veteran goal if the value of the work performed by its own forces, combined with any work to be performed by TGB and Veteran subcontractors and suppliers, meets or exceeds the TGB or Veteran subcontractor goals.

## 11. EVALUATION OF GOOD FAITH EFFORTS

- 11.1 If a proposer submits a TGB or Veteran commitment rate that is less than either goal, then the proposer must demonstrate that it made adequate good faith efforts to achieve the goal(s) it failed to meet.
- 11.2 MnDOT's Office of Civil Rights will review the good faith effort documents and make a fair and reasonable judgment of whether a proposer that did not meet the goal made adequate good faith efforts to locate reasonably available TGB and Veteran firms. MnDOT will consider the quality, quantity, and intensity of the different kinds of efforts that the proposer has made. The efforts employed by the proposer should be those that one could reasonably expect a proposer to make if the proposer were actively and aggressively trying to obtain TGB and Veteran participation sufficient to meet the contract goals. Mere pro forma efforts are not good faith efforts to meet these contract requirements. The proposer must show that it took all necessary and reasonable steps to achieve the TGB and Veteran goals which, by their scope, intensity, and appropriateness

to the objective, could reasonably be expected to obtain sufficient participation, even if they were not fully successful. In evaluating the proposer's good faith efforts to locate TGB and Veteran firms, MnDOT will consider the list of actions below. This is not a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors may be relevant in appropriate cases. Adequate good faith efforts to locate reasonably available TGB and Veteran firms will be determined on a case-by-case basis.

#### 11.2.1 Solicitation

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

#### 11.2.2 Selection of Work

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

#### 11.2.3 Providing Information and Assistance

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

#### 11.2.4 Negotiation

Negotiating in good faith with interested TGBs and Veterans. It is the proposer's responsibility to make a portion of the work available to TGB and Veteran subcontractors and suppliers and to select those portions of the work or material needs consistent with the available TGB and Veteran subcontractors and suppliers, so as to facilitate TGB and Veteran participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of TGBs and Veterans that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for TGB and Veterans to perform the work. A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including TGB and Veteran subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using TGBs and Veteran businesses is not in itself sufficient reason for the proposer's failure to meet the contract TGB or Veteran 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 forces does not

relieve the proposer of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from TGB and Veterans if the price difference is excessive or unreasonable.

11.2.5 Rejection of TGBs or Veterans

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

11.2.6 Financial Assistance

Making efforts to assist interested TGBs and Veterans in obtaining lines of credit or insurance as required by MnDOT or proposer.

11.2.7 Equipment Assistance

Making efforts to assist interested TGBs and Veterans in obtaining necessary equipment, supplies, materials, or related assistance or services.

11.2.8 Recruitment

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

11.2.9 Whether the proposer's documentation reflects a clear and realistic plan for achieving the TGB or Veteran goals.

11.2.10 The performance of other proposers in meeting the TGB and Veteran goals. For example, when the proposer fails to meet the goals, but others meet it, MnDOT may reasonably raise the question of whether, with additional reasonable efforts, the proposer could have met the goals. If the proposer fails to meet the TGB or Veteran goals but meets or exceeds the average TGB or Veteran participation obtained by other proposers, MnDOT may view this, in conjunction with other factors, as evidence of the lack of reasonably available TGB or Veteran firms.

11.2.11 Any other evidence which shows that TGB or Veteran firms were not reasonably available to the proposer. The relevance of such evidence must be explained by the proposer at the time it is submitted.

## **12. ADMINISTRATIVE RECONSIDERATION**

- 12.1 If the MnDOT Office of Civil Rights determines that the proposer failed to make adequate good faith efforts and, therefore, does not grant a waiver, the proposer may request administrative reconsideration. If the proposer does not make a timely written

request for administrative reconsideration as described herein, the proposer will be deemed to have waived its right to request administrative reconsideration.

- 12.2 The proposer'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 proposer receives written notice of the determination by the Office of Civil Rights. Administrative reconsideration requests sent by U.S. mail must be postmarked no later than the fifth business day after the proposer receives notice of the determination. The proposer is deemed to have notice as of the date indicated on the certified mail receipt signed by the proposer, or its representative, at the time of delivery. The proposer must submit the written request for reconsideration to the attention of **MnDOT Deputy Commissioner, 395 John Ireland Blvd., St. Paul, Minnesota 55155, or by fax at 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 by fax at 651-366-3129.**
- 12.3 The Commissioner of MnDOT will designate officials to serve as Reconsideration Officials. The Reconsideration Officials shall not have any role in the original determination that the proposer failed to meet the TGB or Veteran subcontractor goal or failed to make adequate good faith efforts to do so.

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

- a. Provide written documentation or argument concerning the issue of whether the proposer met the goal or made adequate good faith efforts to do so.
  - b. Meet in person with the Reconsideration Officials to discuss the issue of whether the proposer met the goal or made adequate good faith efforts to do so.
- 12.4 The Reconsideration Officials will reconsider the good faith efforts documents the proposer was required to submit with the proposal as well as other documents and arguments the proposer is permitted to submit as provided in section 11 of these provisions. The reconsideration process is a review of only the good faith efforts made by the proposer as of the proposal due date. Good faith efforts made subsequent to that date will not be considered.
- 12.5 MnDOT will provide the proposer with a written decision on reconsideration, explaining the basis for the determination **within 5 business days following the date scheduled for the proposer to meet with the Reconsideration Officials to discuss the issue.**

### **13. COUNTING TGB AND VETERAN PARTICIPATION; COMMERCIALY USEFUL FUNCTION**

- 13.1 In accordance with Minn. Rule Part 1230.1820, MnDOT will determine the percentage of TGB and Veteran participation that will count toward TGB and Veteran goals as follows:

- 13.1.1 Credit toward the goal established for the contract will be at 100 percent for subcontractors who provide labor, materials, and supplies and at 60 percent for subcontractors who provide supplies and materials only.
- 13.2 When a TGB or Veteran participates in a contract, MnDOT will only count the value of the work actually performed by the TGB or Veteran toward TGB or Veteran goals. This includes the following:
- 13.2.1 The entire amount of the portion of this MnDOT contract that is performed by the TGB or Veteran's own forces. Include the cost of supplies and materials obtained by the TGB or Veteran for the work of the contract, including supplies purchased or equipment leased by the TGB or Veteran (except supplies and equipment the TGB or Veteran purchases or leases from the prime contractor or its affiliate).
- 13.2.2 The entire amount of fees or commissions charged by a TGB or Veteran firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing insurance specifically required for the performance of a MnDOT contract, counts toward TGB or Veteran goals, provided that MnDOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 13.2.3 When a TGB or Veteran subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward TGB or Veteran goals only if the subcontractor is itself a TGB or Veteran. Work that a TGB or Veteran subcontracts to a non-TGB or non-Veteran firm will not count toward TGB or Veteran goals.
- 13.3 When a TGB or Veteran performs as a participant in a joint venture, MnDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the TGB or Veteran performs with its own forces toward TGB or Veteran goals.
- 13.4 MnDOT will count expenditures of a TGB or Veteran contractor toward TGB or Veteran goals only if the TGB or Veteran is performing a commercially useful function on that contract.
- 13.4.1 A TGB or Veteran performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the TGB or Veteran must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the material itself. To determine whether a TGB or Veteran 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, TGB or Veteran credit claimed for its performance of the work, and other relevant factors.

- 13.4.2 A TGB or Veteran does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of TGB or Veteran participation. In determining whether a TGB or Veteran is such an extra participant, MnDOT may examine similar transactions, particularly those in which a TGB or Veteran does not participate.
- 13.4.3 At least 75 percent of the subcontracts awarded to a TGB or Veteran must be performed by the business to which the subcontract is awarded or another TGB or Veteran respectively. If a TGB or Veteran does not perform or exercise responsibility for at least 75 percent of the total cost of its contract with its own work force, or the TGB or Veteran subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, MnDOT may presume that it is not performing a commercially useful function.
- 13.4.4 When a TGB or Veteran is presumed not to be performing a commercially useful function as provided in the preceding paragraph, the TGB or Veteran may present evidence to rebut this presumption. MnDOT may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- 13.5 MnDOT will count expenditures for materials or supplies toward TGB or Veteran goals as provided in the following:
- 13.5.1 MnDOT will count 100% of the cost of the materials or supplies toward TGB or Veteran goals if the materials or supplies are obtained from a TGB or Veteran manufacturer.
- 13.5.2 For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described in the specifications.
- 13.5.3 If the materials or supplies are purchased from a TGB or Veteran regular dealer, MnDOT will count 60% of the cost of the materials or supplies toward TGB or Veteran goals.
- 13.5.4 For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold to or leased to the public in the usual course of business. 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. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.

- 13.5.5 With respect to materials or supplies purchased from a TGB or Veteran which is neither a manufacturer nor a regular dealer, MnDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward TGB or Veteran goals, provided MnDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. MnDOT, however, will not count any portion of the cost of the materials or supplies themselves toward TGB or Veteran goals.
- 13.6 MnDOT will not count the participation of a TGB or Veteran toward the contractor's final compliance with its TGB or Veteran subcontractor obligations on a contract until the amount being counted has been actually paid to the TGB or Veteran(s).

### **13 FAILURE TO FULFILL TGB OR VETERAN SUBCONTRACT COMMITMENTS AFTER AWARD**

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

### **14 TGB AND VETERAN REPLACEMENT**

- 15.1 The contractor must request written consent from MnDOT **prior to terminating a TGB or Veteran**. Written consent is required if the termination occurs any time after a contractor submits an affidavit, subcontract or the TGB and Veteran Description of Work and Field Monitoring Report (Exhibit A), indicating the TGB or Veteran firm will perform on the project. This written consent requirement includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a TGB and Veteran subcontractor with its own forces or those of an affiliate, a non-TGB or non-Veteran, or with another TGB or Veteran firm.
- 15.2 MnDOT will only provide such written consent if it agrees, for reasons stated in its concurrence document, that the prime contractor has good cause to terminate the TGB or Veteran firm. Good cause includes the following circumstances:
- a. The listed TGB or Veteran subcontractor fails or refuses to execute a written contract;
  - b. The listed TGB or Veteran subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the TGB or Veteran subcontractor to perform its work in the subcontract results from the bad faith or discriminatory action of the prime contractor;
  - c. The listed TGB or Veteran subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
  - d. The listed TGB or Veteran subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings under applicable state law;
  - e. MnDOT has determined that the listed TGB or Veteran subcontractor is not a responsible contractor;
  - f. The listed TGB or Veteran subcontractor voluntarily withdraws from the project and provides to MnDOT written notice of its withdrawal;
  - g. The listed TGB or Veteran is ineligible to receive TGB or Veteran credit for the type of work required;
  - h. A TGB or Veteran owner dies or becomes disabled with the result that the listed TGB or Veteran contractor is unable to complete its work on the contract;
  - i. Other documented good cause that MnDOT determines compels the termination of the TGB or Veteran subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a TGB or Veteran it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the TGB or Veteran contractor was engaged, or so that the prime contractor can

substitute another TGB or Veteran or non-TGB or non-Veteran contractor after contract award.

- 15.3 Before transmitting to MnDOT its request to terminate and/or substitute a TGB or Veteran subcontractor, the prime contractor must give notice in writing to the TGB or Veteran subcontractor, with a copy to MnDOT, of its intent to request to terminate and/or substitute, and the reason for the request.
- 15.4 The prime contractor must give the TGB or Veteran five days to respond to the prime contractor's notice and advise MnDOT and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why MnDOT should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), MnDOT may provide a period of shorter than five days.
- 15.5 In addition to post-award terminations, this process applies to pre-award deletions of or substitutions for TGB or Veteran firms put forward by the proposer in negotiated procurements. MnDOT will impose appropriate administrative sanctions for non-compliance with these removal requirements.
- 15.6 MnDOT staff may assist the contractor, when requested, in identifying TGB or Veteran replacement firms. This assistance may include but is not limited to:
  - a. Providing the contractor with information regarding the availability of other TGB and Veterans.
  - b. Providing the contractor with assistance in locating available TGB and Veterans.

## **15 PAYMENTS**

- 16.1 Minnesota Statutes §16A.1245 requires that the prime contractor agrees to pay each subcontractor within ten (10) days of the prime contractor's receipt of payment from the state for undisputed services provided by the subcontractor. The prime contractor is subject to pay interest charges of 1-1/2 percent per month, or any part of a month, to the subcontractor on any undisputed amount not paid to the subcontractor within the ten (10) day period.
- 16.2 Contractors making payments to Contractors, Subcontractors, Suppliers, and Service Providers, regardless of tier, TGB or Veteran status, are required to complete and submit Contractor Payment Form(s) to the MnDOT Office of Civil Rights, each time payments are made to subcontractors until final payment is made, no later than ten (10) days after receiving payment from MnDOT.
- 16.3 Failure to comply with the Contractor Payment Form submission requirement or Minnesota's prompt payment statute may result in the withholding of progress payments.

- 16.4 At the conclusion of the contract, the prime contractor must present to the MnDOT Office of Civil Rights the TGB and Veteran-owned Business Total Payment Affidavit. The affidavit must show the total dollar amount of payments made to each TGB and Veteran. Submission of this information is a condition of payment.
- 16.5 Proposers who submit a proposal are hereby notified that the Minnesota False Claims Act (Minn. Stat. §15C.02) applies to statements and certifications made in connection with the TGB and Veteran programs.



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

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

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

**OR**

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

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

**OR**

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

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

**OR**

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

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

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

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

Signed \_\_\_\_\_  
 Proposer or authorized representative

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

S.P. \_\_\_\_\_ Proposal Due Date \_\_\_\_\_

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

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

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

Signed \_\_\_\_\_  
Proposer or Authorized Representative

Proposers requesting a waiver must complete and submit the following:

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

Prime Contractor \_\_\_\_\_ State Project # \_\_\_\_\_



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

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

**Section (A):** (All TGB & Veteran-Owned Subcontractors and Suppliers must complete this Section.)

**MUST BE COMPLETED BY THE PRINCIPAL**

Check One:  TGB or  Veteran-Owned Business

Proposal Due Date: \_\_\_\_\_ State Project Number: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_ Phone #: \_\_\_\_\_

TGB/Veteran Subcontractor: \_\_\_\_\_ Phone #: \_\_\_\_\_

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

TGB/Veteran Participation Claimed: Percent \_\_\_\_\_% Amount \_\_\_\_\_

1. Did you propose 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 work scope to be performed:  
\_\_\_\_\_  
\_\_\_\_\_
4. Are there any other agreements not addressed in the subcontract? If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_
5. If equipment to be used on this contract is not owned by the TGB/Veteran-owned business, please provide the following information:
  - a. Will the renting or leasing include any of the following: (Attach a copy of the lease/rental agreement(s)).  
Equipment \_\_\_\_\_ Insurance \_\_\_\_\_ Operator \_\_\_\_\_ or Maintenance \_\_\_\_\_
  - b. Lessor's name: \_\_\_\_\_  
Amount to be paid: \_\_\_\_\_ Number of days to be used: \_\_\_\_\_
6. Will there be any other firm(s) providing work listed in your subcontract?  
If yes, answer the following: Firm's Name: \_\_\_\_\_ \$ amount of the work: \_\_\_\_\_
7. What is the name of the person supervising your work on this project? \_\_\_\_\_  
Is this your employee? \_\_\_\_\_
8. How many people will you be employing on this project? \_\_\_\_\_ Minorities: \_\_\_\_\_ Females: \_\_\_\_\_
9. Total dollar amount of materials to be supplied? \_\_\_\_\_
10. Who are you purchasing the materials from? \_\_\_\_\_
11. Please submit Purchase Agreement and/or Purchase Order from manufacturer(s) or primary material supplier(s).  
**NOTE: This Exhibit 'A' will not be approved without the Purchase Agreement/Purchase Order.**

**Section (B):** (Not applicable to P/T contracts)

---

**Section (C):** (All TGB and Veteran-owned Subcontractors and Suppliers must complete Section C.)

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

Company: \_\_\_\_\_

Principal: \_\_\_\_\_  
Signature Title Date

---

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

Project Number: \_\_\_\_\_ District # \_\_\_\_\_

MnDOT OCR Staff Person: \_\_\_\_\_ Phone No. \_\_\_\_\_

Project Manager: \_\_\_\_\_ On-site Phone #: \_\_\_\_\_

Office Phone #: \_\_\_\_\_

---

**Section (E): TO BE COMPLETED BY PROJECT MANAGER WHEN THE TGB OR VETERAN-OWNED BUSINESS HAS COMPLETED  $\frac{1}{3}$  TO  $\frac{1}{2}$  OF ITS WORK ON THE CONTRACT**

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

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

Project Manager: \_\_\_\_\_ Date: \_\_\_\_\_



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

**CERTIFICATE OF GOOD FAITH EFFORTS**

S.P. \_\_\_\_\_ Proposal Due Date \_\_\_\_\_

**TGB**

**Veteran-owned Business**

Prime Contractor \_\_\_\_\_

Commitment \_\_\_\_\_

Commitment \_\_\_\_\_

Proposed Cost \_\_\_\_\_

Goal \_\_\_\_\_

Goal \_\_\_\_\_

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

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

(Make additional copies of this form as necessary)

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

\_\_\_\_\_  
Proposer or Authorized Representative

Page \_\_\_\_ of \_\_\_\_



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

**BIDDERS LIST**

S.P. \_\_\_\_\_ Proposal Due Date \_\_\_\_\_ - **TGB** **Veteran-owned Business**  
 Prime Contractor \_\_\_\_\_ Commitment \_\_\_\_\_ Commitment \_\_\_\_\_  
 Proposed Cost \_\_\_\_\_ Goal \_\_\_\_\_ Goal \_\_\_\_\_

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

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

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

(Make additional copies of this form as necessary)

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

**Contractor Payment Form**

State Project Number: \_\_\_\_\_

Prime \_\_\_\_\_ Subcontractor \_\_\_\_\_

Payment Reporting Period: (From: \_\_\_\_\_ To: \_\_\_\_\_)

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

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

(This form may be submitted in an alternate format)

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

\_\_\_\_\_  
Proposer or Authorized Representative

Page \_\_\_\_ of \_\_\_\_

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

**GOOD FAITH EFFORTS AFFIDAVIT**

STATE OF MINNESOTA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_ being first duly sworn, state as follows:

1. I am the \_\_\_\_\_ of  
\_\_\_\_\_ organization that is submitting a proposal for the  
State Project \_\_\_\_\_.
  
2. I have the authority to make this affidavit for and on behalf of the proposer.
  
3. The information provided in the attached Certificate of Good Faith Efforts is true and  
accurate to the best of my belief.

Signed \_\_\_\_\_  
Proposer or authorized representative      Title      Date

Subscribed and sworn to before me

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_, 20\_\_\_\_\_