DEPARTMENT OF TRANSPORTATION

# Disadvantaged Business Enterprise (DBE) Special Provisions

| Project Information | |
|---|---|
| **State Project Number**: | **This contract uses the following project delivery method:**<br>☐ Design-bid-build (DBB)<br>☐ Design-build (DB)<br>☐ Construction Manager/General Contractor (CM/GC)<br>**OR**<br>☐ This is a professional-technical (PT) services contract |
| **This contract will be solicited and administered by:**<br>☐ The Minnesota Department of Transportation (MnDOT)<br>☐ A local governmental unit | |

## Introduction

**Federal Regulations Govern**. Some or all of the funds for this contract will come from the U.S. Department of Transportation (USDOT). Therefore, the federal Disadvantaged Business Enterprise (DBE) program described at Title 49, Part 26 of the Code of Federal Regulations (CFR) applies to this contract. The responder is responsible for understanding and following the requirements of 49 CFR Part 26.

**Purpose**. These special provisions (1) outline the responder's obligations under the federal DBE program, (2) explain the process MnDOT Office of Civil Rights (OCR) will follow to evaluate the responder's compliance with DBE program requirements, and (3) identify sanctions for failing to comply with DBE program requirements. These provisions apply *in addition to* any other requirements applicable to award of this contract.

**Policy Statement**. MnDOT must ensure nondiscrimination in the award and administration of federally eligible highway projects. The DBE program seeks to:

- Create a level playing field on which DBEs can compete fairly for federally eligible highway projects,
- Ensure that the DBE program is narrowly tailored,
- Ensure that only eligible firms are permitted to participate as DBEs,
- Help remove barriers to the participation of DBEs in federally eligible highway projects, and
- Provide flexibility in establishing and providing opportunities for DBEs.

**Contract Assurance**. The USDOT requires MnDOT, as a recipient of federal funds, to include the following paragraph in contracts for federally funded projects. It applies to the responder, and the responder must also include it in subcontracts the responder executes for this project.

> The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to, (1) withholding monthly progress payments, (2) assessing sanctions, (3) liquidated damages, and/or (4) disqualifying the contractor from future bidding as non-responsible.

**Application and Interpretation**. Terms must be interpreted as follows:

- "Responder" refers to the bidder, apparent low bidder, proposer, or apparent successful proposer.
- "Proposal" includes a bid, proposal or price proposal.

- "CRL" refers to AASHTOWare Project Civil Rights and Labor. For additional information about CRL, see **Attachment 5.**

**DBE Directory**. A directory of all certified DBEs in the state of Minnesota is available at the following link:

http://mnucp.metc.state.mn.us/Default.aspx

The Minnesota Unified Certification Program (MnUCP) maintains this directory. It is the definitive source of information regarding the DBE certification status of firms in Minnesota. A firm must be certified prior to contract execution in order to qualify for credit toward the DBE goal.

**False Claims**. The Federal False Claims Act (31 USC §§ 3729-3733) and Minnesota False Claims Act (Minn. Stat. § 15C.02) apply to statements and certifications the responder makes in connection with the DBE program.

## Before Contract Award

*DBE Goal*

The DBE goal for this project is _____%. or ☐ Race/Gender Neutral

To be eligible for award of this contract, the responder must demonstrate that the responder has (1) obtained sufficient DBE participation to meet the DBE goal or (2) made adequate good faith efforts (GFE) to meet the DBE goal. The responder must submit the information specified in **Table A** in the time specified in **Table B**. If the contract has a specific numerical DBE participation goal, all responders must include their DBE commitment for the contract at the time the proposal is submitted. If the responder does not properly document the responder's efforts or submit timely and complete documentation to MnDOT OCR, MnDOT must reject the responder's bid.

*Race/Gender Neutral Goal*

If the DBE goal is Race/Gender Neutral (RGN), all responders are encouraged to include their anticipated DBE utilization for the contract in their proposals. **Each responder will still be required to submit a bidders list of all subcontractors and suppliers (both DBE and non-DBE) on projects with an RGN goal.** While DBE participation is encouraged on proposals with an RGN goal, responders are not required to submit GFE documentation specified in **Table A, other than a bidders list (parts D and E of Exhibit B, the GFE Consolidated form)**. Payment information described in **Table C** is required on **all projects**.

*DBE Credit*

DBE work may be counted toward the DBE goal for any of the following activities:

- hiring a DBE as a subcontractor or consultant to do project work,
- purchasing materials from a DBE (typically sixty percent of the supplier's contracted amount will count toward the goal),
- leasing equipment from a DBE,
- entering into a joint venture with a DBE (this requires approval from OCR before bid opening), or
- using DBEs for other services specifically approved by OCR before bid opening.
- If the responder is an eligible DBE, the responder may count all work being self-performed towards the subcontractor goals on this project.

DBE credit is counted for work actually performed by a DBE. The DBE must perform a commercially useful function. **Attachment 1** describes how MnDOT will count DBE credit and how MnDOT will determine whether a DBE performs a commercially useful function.

| **Table A – What to Submit to MnDOT** | |
|---|---|
| ☐ **Design-bid-build administered by MnDOT**<br>☐ **Construction Manager/General Contractor administered by MnDOT**<br>☐ **Design-build administered by MnDOT** | ☐ **Construction Contract administered by local governmental unit**<br>☐ **PT contract administered by MnDOT or local governmental unit** |
| **IF THE DBE GOAL IS MET** | **IF THE DBE GOAL IS MET** |
| • Exhibit A for each DBE participating on the project<br>• Parts A, B, C, D, and I of the GFE consolidated form<br>• The responder must submit their bidders list or bidder/quoter information electronically via CRL. For this reason, the responder does not need to fill out parts E of the GFE consolidated form. | • Exhibit A for each DBE participating on the project<br>• Parts A, B, C, D, E, and I of the GFE consolidated form |
| **IF THE DBE GOAL IS NOT MET** | **IF THE DBE GOAL IS NOT MET** |
| • Exhibit A for each DBE participating on the project<br>• Parts A, B, C, D, F, G, H and I of the GFE consolidated form<br>• The responder must submit the bidders list or bidder/quoter information electronically via CRL. For this reason, the responder does not need to fill out part E of the GFE consolidated form.<br>• Any additional information that will help explain the responder's efforts to obtain DBE participation (ONLY IF the responder does not meet the DBE goal) | • Exhibit A for each DBE participating on the project<br>• Parts A, B, C, D, E, F, G, H and I of the GFE consolidated form<br>• Any additional information that will help explain the responder's efforts to obtain DBE participation (ONLY IF the responder does not meet the DBE goal) |

**Table B – When and How to Submit Information to MnDOT**

| ☐ **Design-bid-build** | ☐ **Professional-technical** |
|---|---|
| **Date and Time**<br>The submission due date is the 5th calendar day after the bid due date**. Documentation is due before 4:30 PM Central Time on the 5th calendar day after the bids are due.**<br><br>**Format and Location**<br>The responder can submit documents via email, fax, hand delivery, or U.S. mail. Submit to MnDOT OCR as follows:<br><br>Email: ocrformsubmissions.DOT@state.mn.us<br><br>Fax: **651-366-3129.**<br><br>To hand-deliver or submit by U.S. mail, address printed documents to **MnDOT Office of Civil Rights, 395 John Ireland Boulevard, Mail Stop 170, St. Paul, MN 55155**. Submissions by U.S. mail will satisfy the timing requirement if postmarked by the time specified in the "Date and Time" section above. | **Date and Time**<br>The submission due date is the 5th calendar day after the successful responder is notified by MnDOT. **Documentation is due before 4:30 PM Central Time on the 5th calendar day after the date of the successful responder letter/email issued by MnDOT.**<br><br>**Format and Location**<br>The responder can submit documents via email, fax, hand delivery, or U.S. mail. Submit to MnDOT OCR as follows:<br><br>Email: ocrformsubmissions.DOT@state.mn.us<br><br>Fax: **651-366-3129.**<br><br>To hand-deliver or submit by U.S. mail, address printed documents to **MnDOT Office of Civil Rights, 395 John Ireland Boulevard, Mail Stop 170, St. Paul, MN 55155**. Submissions by U.S. mail will satisfy the timing requirement if postmarked by the time specified in the "Date and Time" section above. |
| ☐ **Construction Manager/General Contractor** | ☐ **Design-build** |
| **Date and Time**<br>The submission due date is the letting date. **Documentation is due before 4:30 PM Central Time on the letting date.** Subsequent bid packages are due no later than 4:30 PM on the fifth calendar day following the letting of that bid package.<br><br>**Format and Location**<br>The responder can submit documents via email, fax, hand delivery, or U.S. mail. Submit to MnDOT OCR as follows:<br><br>Email: ocrformsubmissions.DOT@state.mn.us<br><br>Fax: **651-366-3129.**<br><br>To hand-deliver or submit by U.S. mail, address printed documents to **MnDOT Office of Civil Rights, 395 John Ireland Boulevard, Mail Stop 170, St. Paul, MN 55155**. Submissions by U.S. mail will satisfy the timing requirement if postmarked by the time specified in the "Date and Time" section above. | **Date and Time**<br>The submission due date is 9:30AM on the Price Proposal due date. **Documentation is due no later than 9:30AM on the Price Proposal due date.**<br><br>**Format and Location**<br>See the Design-Build "Instructions to Proposers" for format and location delivery specifics. |
| **On All Projects** | |
| If the date the responder's submission is due is a Saturday, Sunday, federal holiday, or Minnesota state holiday, the documentation is due on the next calendar day that is not a Saturday, Sunday, federal holiday, or Minnesota state holiday. | |
| The responder may submit a written request for an extension from the Director of MnDOT Office of Civil Rights for good cause shown. However, until the responder receives written approval of their request, the due date for its submission remains as specified above. | |

If the responder does not meet the DBE goal, MnDOT OCR will conduct a Good Faith Efforts (GFE) review to determine whether the responder made adequate GFE to meet the goal based on the documentation the responder has provided by the submission due date. The standards MnDOT OCR will use to evaluate GFE are described in **Attachment 2**. Also, if MnDOT OCR determines that the responder did not make adequate GFE to meet the goal, the responder will be deemed non-responsible. The responder may request an administrative reconsideration of that determination. The process for administrative reconsideration is described in **Attachment 3**.

## After Contract Award

*DBE Commitments, Termination, and Replacement*

The DBE Description of Work and Field Monitoring Report (Exhibit A) commits the responder to using the specified DBEs to perform work or supply materials. This commitment is binding on the responder unless the responder requests and is granted written approval from MnDOT OCR. If the responder fails to use a specified DBE for the amount of compensation the responder has specified in the Exhibit A form, without requesting and receiving written approval from MnDOT OCR, the responder has materially breached this contract and may not be entitled to payment for the work or materials that were committed to be performed by the DBE.

MnDOT OCR will not approve the responder's request to terminate a DBE unless the responder (1) gives written notice to the DBE, with a copy to MnDOT OCR, of the responder's intent to request to terminate the DBE's subcontract, (2) allow at least five business days for the DBE to advise the responder and MnDOT OCR of the reasons, if any, it objects to the proposed request to terminate, (3) demonstrate good cause to terminate the DBE as described in **Attachment 4**, and (4) either replace the DBE with another DBE for at least as much compensation as the initially specified DBE or make GFE to do so. MnDOT OCR will use the GFE standards described in **Attachment 2** to determine whether the responder made GFE. MnDOT OCR may shorten the five-day DBE response period if there is a public necessity. The responder may request assistance from MnDOT OCR to identify available replacement DBEs.

If the responder is involved in a negotiated procurement with MnDOT, the responder must obtain written approval from MnDOT as described in this section before deleting or substituting a DBE the responder has identified as part of a negotiation package. The responder must notify MnDOT OCR of any changes or substitutions to DBE participation, including changes occurring during the negotiation phase of the contract.

*Continuing Good Faith Efforts*

After contract award, the Contractor has a continuing obligation to make adequate good faith efforts to meet the DBE goal for the duration of the contract. Good faith efforts are explained in **Attachment 2**. To receive credit for DBE participation added after award, the responder must report the participation to MnDOT OCR and submit a DBE Description of Work and Field Monitoring Report (Exhibit A).

*Prompt Payment to Subcontractors*

The responder must pay each subcontractor no later than 10 business days of receiving payment for undisputed services provided by the subcontractor. This applies to all subcontractors. The responder must pay the subcontractor interest charges of 1.5 percent per month, or any part of a month, on any undisputed amount not paid within 10 days. The responder must 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 all tasks identified in the subcontract have been accomplished and documented as required by MnDOT. If MnDOT has incrementally accepted a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The responder must report payment information as specified in **Table C**. **If the responder fails to comply with prompt payment requirements, including reporting requirements, the responder has materially breached this contract.**

Furthermore, verification of the responder's final payment to each subcontractor is a condition of final clearance from MnDOT OCR and final payment from MnDOT.

| **Table C – Required Payment Submissions** | |
|---|---|
| ☐ **Design-bid-build administered by MnDOT**<br>☐ **Construction Manager/General Contractor administered by MnDOT**<br>☐ **Design-build administered by MnDOT** | ☐ **Construction Contract administered by local gov't unit**<br>☐ **PT contract administered by MnDOT** |
| Within 10 business days of the responder's receipt of MnDOT payment:<br>• the responder must submit information about individual payments to subcontractors via CRL.<br><br>When final payment has been made to subcontractors:<br>• the responder must submit information about the responder's final payment to each subcontractor via CRL.<br>• the responder must submit a Total Payment Affidavit to MnDOT OCR after final payment to all DBE subcontractors.<br><br>To fax your submission, use **651-366-3129.**<br><br>To email your submission, attach documents as PDFs and send to ocrformsubmissions.dot@state.mn.us<br><br>To submit by U.S. mail, address printed documents to **MnDOT Office of Civil Rights, 395 John Ireland Boulevard, Mail Stop 170, St. Paul, MN 55155**. | Within 10 business days of the responder's receipt of MnDOT or Local Government Unit payment:<br>• the responder must submit a Contractor Payment Form to MnDOT after each payment to a subcontractor.<br><br>When final payment has been made to all subcontractors:<br>• the responder must submit a Total Payment Affidavit to MnDOT OCR after final payment to all DBE subcontractors.<br>To fax your submission, use **651-366-3129.**<br><br>To email your submission, attach documents as PDFs and send to ocrformsubmissions.dot@state.mn.us<br><br>To submit by U.S. mail, address printed documents to **MnDOT Office of Civil Rights, 395 John Ireland Boulevard, Mail Stop 170, St. Paul, MN 55155**. |

## Appendices

*Explanatory Attachments*

- Attachment 1 – Counting and Commercially Useful Function
- Attachment 2 – Good Faith Efforts Documentation and Standards
- Attachment 3 – Administrative Reconsideration
- Attachment 4 – Good Cause to Terminate a DBE
- Attachment 5 – Information about AASHTOWare Project CRL

*Forms*

- Exhibit A – DBE Description of Work and Field Monitoring Report
- Exhibit B – GFE Consolidated Form (Parts A-I)
- Exhibit C – Contractor Payment Form
- Exhibit D – Total Payment Affidavit

## Attachment 1 – Counting and Commercially Useful Function

### DBE Counting – Generally

(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) If a firm is not currently certified as a DBE in accordance with the standards of 49 CFR Part 26 subpart D at the time of execution of the contract, MnDOT will not count the firm's participation toward any DBE goals.

(d) 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.

(e) MnDOT will not count the participation of a DBE subcontractor toward the responder's final compliance with the responder's DBE obligations on a contract until the responder has paid the amount to the DBE.

### DBE Counting – Materials and Supplies

(f) MnDOT will count the responder's expenditures with DBEs for materials or supplies toward DBE goals as follows.

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

2. For purposes of this section (f), 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 responder purchases the materials or supplies 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 (f), 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).

D. If a DBE firm is supplying bulk materials such as petroleum products, steel, cement, gravel, stone or asphalt which are delivered to the project site or a commercial establishment for processing or storage prior to reaching the project site, the firm will receive 60% credit only for the total cost of materials and associated hauling used on this contract.

(g) With respect to materials or supplies the responder purchases from a DBE which is neither a manufacturer nor a regular dealer, MnDOT will count the entire amount of fees or commissions the responder pays 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.

**Commercially Useful Function – Generally**

(h) MnDOT will count expenditures of a DBE toward DBE goals only if the DBE performs a commercially useful function on the 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 regarding commercially useful function are subject to review by the concerned operating administration but are not administratively appealable to DOT.

**Commercially Useful Function – Trucking**

(i) MnDOT will use the following factors to determine whether a DBE trucking company performs 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 lease trucks equipped with drivers from a non-DBE firm. In such a case, the DBE is entitled to credit for the total value of transportation services provided by the non-DBE firm not to exceed the value of transportation services provided by DBE-owned trucks or leased trucks with DBE employees. Additional participation by trucks and drivers from non-DBE firms will receive credit only for the fee or commission paid to the non-DBE firm as a result of the lease arrangement.

6. The DBE may also lease trucks without drivers from a non-DBE firm. If the DBE firm uses its own employees to drive the leased trucks, the DBE firm is entitled to credit for the full value of the transportation services.

7. 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.

## Attachment 2 – Good Faith Efforts Documentation and Standards

If the responder's DBE commitment falls short of the DBE goal, the responder must demonstrate adequate good faith efforts (GFE) in order to be eligible for contract award (49 CFR § 26.53). To demonstrate that the responder made adequate GFE, the responder must show documentation that the responder 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 the responder were not fully successful.

The efforts employed by the responder should be those that one could reasonably expect the responder to take if the responder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the contract requirements. The GFE consolidated form, attached to these provisions as Exhibit B, provides a helpful start to the responder's documentation, **but the responder is not limited to the information specified in the consolidated form.**

When the responder submits GFE documentation, the responder must explain the relevance of any documents the responder submits that are not mentioned in these special provisions or the related forms. **Responder is encouraged to submit ALL information that supports good faith efforts with an explanatory narrative.** Only documentation provided to MnDOT OCR by the submission due date can be considered by MnDOT to determine GFEs.

### Good Faith Efforts Evaluation

MnDOT will consider the actions listed below when evaluating the responder's GFE documentation. This list closely resembles a list in 49 CFR Part 26, Appendix A. The listed actions are consistent with GFE, but the list is not a mandatory checklist, nor is it intended to be exclusive or exhaustive. MnDOT will also consider the performance of other bidders relative to the DBE goal. Other factors or types of efforts may be relevant in appropriate cases. MnDOT will make GFE determinations on a case-by-case basis.

(a) **Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract**. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to DBEs that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project. The bidder should solicit this interest as early as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up on 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 (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

(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 with their offer for the subcontract.**

(d) **Negotiating in good faith with interested DBEs.** It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for 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 bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

(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 status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals. A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

(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.**

**Notification of MnDOT Decision**

After reviewing the responder’s GFE documentation and the performance of other bidders relative to the DBE goal, the Director of MnDOT OCR, or his or her designee, will determine whether the responder met the DBE goal or made adequate GFE. MnDOT OCR will mail the Director’s determination to the responder approximately 15 business days after the responder’s submittals are received. If the Director determines that the responder failed to meet the DBE goal or make adequate GFE, MnDOT OCR will send the notice by certified U.S. mail.

## Attachment 3 – Administrative Reconsideration

If the Director determines that the responder failed to make adequate good faith efforts (GFE), the responder may request administrative reconsideration of that determination (49 CFR §26.53(d)).

### Requesting Reconsideration

The responder's request for reconsideration must be written and timely. Otherwise, the responder will be deemed to have waived the right to reconsideration.

If the responder sends the request by fax or personal delivery, MnDOT must **receive** it no later than 4:30 PM on the fifth business day after the responder receives notice of the Director's determination. If the responder sends the responder's request by U.S. mail, it must be postmarked no later than the fifth business day after the responder receives notice of the Director's determination. The responder is deemed to have notice as of the date indicated on the certified mail receipt signed by the responder or the responder's representative at the time of delivery.

The responder's written request must be submitted to the attention of:

**MnDOT Deputy Commissioner at:** MnDOT, 395 John Ireland Blvd., St. Paul, MN 55155; or by fax at 651-366-4795**.**

**A copy of the same request must be sent to the Director of the MnDOT Office of Civil Rights** at 395 John Ireland Blvd., St. Paul, MN 55155 or by fax at 651-366-3129.

### Reconsideration Process

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 responder failed to meet the DBE goal or make adequate GFE to do so.

As part of the reconsideration process, the responder will have the opportunity to:

- Provide the Reconsideration Officials written documentation and arguments as to why the responder believe the responder met the DBE goal or made adequate GFE to do so (49 CFR § 26.53(d)(1)).

- Meet in person with the Reconsideration Officials to explain why the responder believes the responder met the DBE goal or made adequate GFE to do so (49 CFR § 26.53(d)(3)).

The Reconsideration Officials will reconsider the record documenting the GFE the responder made. The reconsideration process is a review of only the GFE the responder made as of the submission due date specified in **Table B**. GFE made after that date will not be considered.

MnDOT will provide the responder with a written decision **within 5 business days following the date the responder is scheduled to meet with the Reconsideration Officials**. The written decision will include an explanation of reasons for the decision. The decision is not subject to administrative appeal to the U.S. Department of Transportation (49 CFR § 26.53(d)(5)).

## Attachment 4 – Good Cause to Terminate a DBE

The responder may not, without written approval from MnDOT OCR, terminate or replace a DBE whose participation the responder represented in the original DBE commitment. MnDOT OCR will not approve a request to terminate or replace a DBE unless the responder demonstrates good cause to do so. In accordance with 49 CFR § 26.53(f), good cause includes the following circumstances.

(a) The DBE subcontractor fails or refuses to execute a written contract;

(b) The DBE 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 DBE subcontractor to perform its work in the subcontract results from the bad faith or discriminatory action of the prime contractor;

(c) The DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;

(d) The DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(e) The DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR parts 180, 215 and 1,200 or applicable state law;

(f) OCR has determined that the DBE subcontractor is not a responsible contractor;

(g) The DBE subcontractor voluntarily withdraws from the project and provides to OCR written notice of its withdrawal;

(h) The DBE is ineligible to receive DBE credit for the type of work required;

(i) A DBE owner dies or becomes disabled with the result that the DBE contractor is unable to complete its work on the contract; or

(j) Other documented good cause that MnDOT OCR determines compels the termination of the DBE subcontractor.

**Good cause does not exist if the responder seeks to terminate a DBE represented in the responder's DBE commitment so the responder can self-perform or transfer to another subcontractor work originally committed to the DBE.**

**Attachment 5 – Information about AASHTOWARE Project CRL**

## General Information

AASHTOWare Project Civil Rights Labor (CRL) is a web-based system that currently allows contractors to submit electronic payroll, subcontract and subcontractor payment information, and Bidder/Quoter submittals.

Design-bid-build construction contracts let by MnDOT, advertised after July 1, 2013, report information through the CRL system.

More information regarding CRL requirements can be found in the MnDOT Standard Specifications for Construction: ***Electronic Submission of Payrolls and Statements and Bidders Lists for Federally Funded Projects.***

**Registration and Training**

Information on annual contractor training, vendor and user registration, system support, forms, and manuals can be found at:

https://www.dot.state.mn.us/const/labor/civil-rights-labor.html

MnDOT also provides access to a CRL Interactive E-learning Tool at:

https://www.dot.state.mn.us/onlinelearning/lcu/crl/

DEPARTMENT OF TRANSPORTATION

# Exhibit A - DBE Description of Work and Field Monitoring Report

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 through D and signed in section E.**

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 $ _____

**Section (B):** (All DBE subcontractors, including trucking firms and suppliers, must complete this section.)

1. Did you bid and sign a subcontract agreement with the above-named prime contractor? _____
2. List the line items to be performed and the associated North American Industry Classification System (NAICS) codes for each item:

| Scope of Work | Associated NAICS Code |
|---|---|
| | |
| | |
| | |

3. If equipment to be used is not owned by your firm, please provide the following information:
   a. Will you be renting or leasing 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: _____
4. 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: _____
5. What is the name of the person supervising your work on this project? _____
   Is this your employee? _____
6. Is your firm purchasing materials (including Bulk Materials such as AC Oil, Cement, Gravel, etc.) to be supplied or installed on the project?

   YES _____ NO_____ (If "Yes" Complete **Section C** below)

**Section (C)** (DBE firms purchasing or supplying materials on the project complete this section.)

Please submit Purchase Agreement, Materials Invoice, or Purchase Order from manufacturer(s) or primary material supplier(s).

1. What material(s) are you supplying? _____
2. Total dollar amount of materials to be supplied? _____
3. Who are you purchasing the materials from? _____
4. What is the quantity of material to be purchased? _____
5. Where are the materials being delivered? (ie. project site or plant) _____
6. Is the delivery equipment owned and operated by your firm? YES _____ NO_____

   If not, who owns and operates the equipment? _____

**Section (D) TO BE COMPLETED ONLY BY DBE TRUCKING FIRMS AND MATERIAL HAULERS**

1. The number of hours contracted or quantities to be hauled on this project? _____
2. How many fully operational units will be used on this Project? _____ (Tractor/trailers: _____ Dump trucks: _____
3. How many fully operational units will be yours? _____ (Dump trucks: _____ Tractors/trailers: _____)
4. How many other units will be yours? _____ (Tractors: _____ Trailers: _____)
5. How many ITOs will be used on this project? _____(Tractors: _____ Trailers _____ Dump Trucks _____)

| Name of DBE ITOs (add a list if necessary) | | Dollar Amount of Contract/Agreement | Number of Dump Trucks, Tractors/Trailers (specify) |
|---|---|---|---|
| **1.** | | | |
| **2.** | | | |
| **3.** | | | |
| **4.** | | | |

**Section (E):** (All DBE subcontractors, including trucking firms, must complete this section.)

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

DBE Company: _____

DBE Principal: _____ _____ _____

Signature Title Date

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

Reviewed by OCR: _____ OCR Main Phone No: 651-366-3073

Email for OCR Forms: OCRFormSubmissions.DOT@state.mn.us

**Section (G): TO BE COMPLETED BY PROJECT ENGINEER WHEN THE DBE'S PORTION OF WORK IS 1/3 TO ½ COMPLETED**

1. Does it appear that the DBE firm is performing the work specified in (Exhibit "A") description of work?
   Yes _____ No _____
2. Does it appear that the DBE contractor is managing their portion of the project and using their own company employees?
   Yes _____ No _____
3. Does it appear that the DBE contractor is providing the equipment for their items of work or other work specified?
   Yes _____ No _____
4. Does it appear that the quality of the DBE contractor's performance, scheduling and project management are meeting industry standards?
   Yes _____ No _____
5. If the DBE is supplying materials, are the quantities proportionate for what is required on the project (refer to **Section C** above)?
   Yes ____ No ____
6. Comments: _____
   _____

**NOTE:** If you, as the Project Engineer, 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 Engineer: _____ Date: _____

DEPARTMENT OF TRANSPORTATION

# Exhibit B - Office of Civil Rights - Good Faith Efforts Consolidated Form

## (Includes Parts A-I)

This form will assist you in demonstrating that you met the DBE goal or made adequate good faith efforts to meet the goal. You must provide this form and all supporting GFE documentation to the MnDOT Office of Civil Rights prior to the submission due date identified in **Table B** of the DBE Special Provisions.

| **PART A – PRIME CONTRACTOR'S INFORMATION (You must complete this part.)** | | | | |
|---|---|---|---|---|
| COMPANY NAME | | | | |
| ADDRESS | STREET | CITY | STATE | ZIP CODE |
| PHONE # | FAX # | EMAIL ADDRESS | | |
| CONTACT PERSON | TITLE | | | |

| **PART B - PROJECT DESCRIPTION (You must complete this part.)** | | | |
|---|---|---|---|
| STATE PROJECT # | CONTRACT # (If Applicable) | ☐ Attach copy of MnDOT 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)<br>☐ Pre-award<br>☐ Post-award/Execution |
| TOTAL DBE PARTICIPATION DOLLARS BASED ON ADVERTISED DBE GOAL (Total prime bid $ * DBE % Goal) | | | |

| **PART C – PROJECT SUMMARY AMOUNTS (You must complete this part.)** | |
|---|---|
| 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 $ ) | $ |

DEPARTMENT OF TRANSPORTATION

State Project Number: Contractor:

## PART D – BIDDERS LIST - DBE QUOTES SUBMITTED (You must complete this part. If the project is let by MnDOT, you must submit information through the AASHTOWare Project CRL about all bids/quotes you have received and enter your DBE Commitments on this form.)

| DBE COMMITMENTS<br>List all DBE firms who provided quotes or bid proposals. Indicate whether the quotes were accepted. Please include a copy of their quote(s).<br>DBE Contractor Information | | | | | Description of Work | Dollar Amount Of Bid/Proposal. | Will Firm Be Used? |
|---|---|---|---|---|---|---|---|
| 1. | DBE Contractor Name | | | | | | Yes ☐ No ☐ |
| | **Contact Name** | | | | | | |
| | Address | | | | | | |
| | Federal Tax # | | E-mail | | | | |
| | Phone | | Fax: | | | | |
| 2. | DBE Contractor Name | | | | | | Yes ☐ No ☐ |
| | **Contact Name** | | | | | | |
| | Address | | | | | | |
| | Federal Tax # | | E-mail | | | | |
| | Phone | | Fax | | | | |
| 3. | DBE Contractor Name | | | | | | Yes ☐ No ☐ |
| | **Contact Name** | | | | | | |
| | Address | | | | | | |
| | Federal Tax # | | E-mail | | | | |
| | Phone | | Fax | | | | |
| 4. | DBE Contractor Name | | | | | | Yes ☐ No ☐ |
| | Contact Name | | | | | | |
| | Address: | | | | | | |
| | Federal Tax # | | E-mail | | | | |
| | Phone | | Fax | | | | |

**Make additional copies of this page as necessary**

DEPARTMENT OF TRANSPORTATION

State Project Number: Contractor:

**PART E– BIDDERS LIST - NON-DBE QUOTES SUBMITTED (Complete this part only if the project is let by a local governmental unit. If the project is let by MnDOT, you must submit information about bids/quotes you have received through the AASHTOWare Project CRL online system rather than on this form.)**

NON-DBE COMMITMENTS
List all non-DBE firms who provided quotes or bid proposals. Indicate whether the quotes were accepted. Please include a copy of their quote(s).

| | NON-DBE Contractor Information | | | | Description of Work | Dollar Amount Of Bid/Proposal. | Will Firm Be Used? |
|---|---|---|---|---|---|---|---|
| 1. | NON-DBE Contractor Name | | | | | | Yes ☐ No ☐ |
| | **Contact Name** | | | | | | |
| | Address | | | | | | |
| | Federal Tax # | | E-mail | | | | |
| | Phone | | Fax: | | | | |
| 2. | NON-DBE Contractor Name | | | | | | Yes ☐ No ☐ |
| | **Contact Name** | | | | | | |
| | Address | | | | | | |
| | Federal Tax # | | E-mail | | | | |
| | Phone | | Fax | | | | |
| 3. | NON-DBE Contractor Name | | | | | | Yes ☐ No ☐ |
| | **Contact Name** | | | | | | |
| | Address | | | | | | |
| | Federal Tax # | | E-mail | | | | |
| | Phone | | Fax | | | | |
| 4. | NON-DBE Contractor Name | | | | | | Yes ☐ No ☐ |
| | Contact Name | | | | | | |
| | Address: | | | | | | |
| | Federal Tax # | | E-mail | | | | |
| | Phone | | Fax | | | | |

**Make additional copies of this page as necessary**

DEPARTMENT OF TRANSPORTATION

State Project Number: Contractor:

## PART F – 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 | METHOD | | |
| 1 | | ☐ | ☐ | | | | | |
| 2 | | ☐ | ☐ | | | | | |
| 3 | | ☐ | ☐ | | | | | |
| 4 | | ☐ | ☐ | | | | | |
| 5 | | ☐ | ☐ | | | | | |
| 6 | | ☐ | ☐ | | | | | |
| 7 | | ☐ | ☐ | | | | | |
| 8 | | ☐ | ☐ | | | | | |
| 9 | | ☐ | ☐ | | | | | |
| 10 | | ☐ | ☐ | | | | | |
| 11 | | ☐ | ☐ | | | | | |
| 12 | | ☐ | ☐ | | | | | |

**Make additional copies of this page as necessary**

State Project Number: Contractor:

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

**If DBE quotes were rejected, if necessary, 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 or memberships in specific groups (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of a quote in the contractor's efforts to meet the project goal. Please include a copy of the quote(s) received.

| DBE QUOTE | DBE FIRMS WHO QUOTED, BUT WERE NOT SELECTED | TYPE OF WORK QUOTED | FIRM SELECTED FOR SCOPE QUOTED | REASON NOT SELECTED |
|---|---|---|---|---|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |
| 7. | | | | |
| 8. | | | | |

**Make additional copies of this page as necessary**

State Project Number: Contractor:

## PART H – DESCRIPTION OF GOOD FAITH EFFORTS **(Complete this part only if DBE goal is not met. Use additional sheets if necessary.)**

Please describe below or in a separate letter any aspects of your efforts to obtain DBE participation that are not already apparent from the information provided in parts A-G. This is an opportunity to "tell the story" of your GFE. Please give special attention to the factors identified in **Attachment 2** of the DBE special provisions and 49 CFR Part 26, Appendix A. The following questions may help you organize your description. **The questions below are not intended to be a checklist or an exhaustive list of what is considered in evaluating GFE.** Information not submitted will not be considered in making a finding of Good Faith Efforts.

Questions to consider:

- Did you use the current DBE directory to identify DBEs?
- Did you break out work into units that small businesses such as DBEs could reasonably perform?
- Did you solicit DBE participation for work you could have self-performed?
- Did you overlook any DBEs whose business operations are geographically close to the project?
- Did you host any DBE informational workshops or attend any MnDOT sponsored DBE events?
- Did you contact minority business organizations about DBE opportunities?
- Did you send timely written (fax, e-mail, etc.) solicitation notices to certified DBEs?
- Did your solicitation notice include the following information? *name and location of project, bid date, scope of work requested, location where DBEs can review plans and specifications, date and time to submit quote, contact name for technical assistance, any special requirements*
- Did you provide any contacts for possible bonding, insurance, or lines of credit?
- Did you provide any technical assistance relative to bonding, insurance, or lines of credit?
- Did you maintain a follow-up log to track responses to your initial solicitations?
- Did you track the following information after initial solicitation? *name of DBE firm, type of contact (fax, telephone, e-mail, etc.), date and time DBE contacted, name of contact person, response received, reason for DBE not bidding (if applicable)*
- Did you receive bids from DBE's that you did not accept? If so, what were your reasons?

Type Response Below:

DEPARTMENT OF TRANSPORTATION

# Exhibit B – Good Faith Efforts Consolidated Form

## PART I – CERTIFICATION / GOOD FAITH EFFORTS AFFIDAVIT (You must complete this part.)

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 submitted a bid for 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 Good Faith Efforts Consolidated Form 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_____

Pursuant to 49 CFR § 26.107, if any person or firm has willfully and knowingly provided incorrect information or made false statements in connection with the Federal DBE program, the USDOT may initiate suspension or debarment proceedings against such 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.

DEPARTMENT OF TRANSPORTATION

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

CLEAR FORM



# 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 one copy of this form to MnDOT OCR and one copy to the Project Engineer, no later than ten (10) days after receiving payment from MnDOT. Some projects require that payment information be entered into AASHTOWare Project CRL. See Table C of the DBE Special Provisions for payment submission requirements.

| **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. | ☐ | 1. | 1. |
| 2. | ☐ | 2. | 2. |
| 3. | ☐ | 3. | 3. |
| 4. | ☐ | 4. | 4. |
| 5. | ☐ | 5. | 5. |
| 6. | ☐ | 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: |

Completed Contractor Payment forms can be emailed to OCRFormsubmissions.DOT@state.mn.us

DEPARTMENT OF TRANSPORTATION

# DBE Total Payment Affidavit

Pursuant to MnDOT Standard Specifications for Construction, Section 1516.3, 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. This Affidavit is required prior to MnDOT Office of Civil Rights issuing final clearance on the project. 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 Paid |
|---|---|---|---|
| 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 affidavit to the Project Engineer, and one to:
**MnDOT's Office of Civil Rights, 395 John Ireland Blvd., MS 170, St. Paul, MN 55155**
**or email completed form to: ocrformsubmissions.dot@state.mn.us**

**No. 1516.3 – Standard Specifications for Construction**
Unless the Contractor has presented an Affidavit showing the total dollar amounts of work performed by Disadvantaged Business Enterprises (DBE), a final clearance letter will not be issued.