

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS

POLICY STATEMENT

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

Mn/DOT has received federal financial assistance from DOT, and as a condition of receiving this assistance, has signed an assurance that it will comply with 49 C.F.R. Part 26. The DBE requirements of 49 C.F.R. Part 26 apply to this contract. In this regard, the contractor will take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform this contract.

CONTRACT ASSURANCE

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 C.F.R. 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 Mn/DOT deems appropriate.

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SUBMITTAL OF DOCUMENTATION

For all contracts where goals are set, regardless of contract size, the contractor will be required to: (a) propose the participation of specific DBEs to meet the goal; or (b) demonstrate good faith efforts to meet the goal, and (c) acknowledge and accept the requirement for On-the-Job Training (OJT). A contractor must provide justification if it rejects bids, quotes, or proposals from properly certified, qualified DBE firms.

In order to fulfill a DBE goal, the firms utilized as DBE subcontractors must be certified as DBEs by Mn/DOT's Office of Civil Rights prior to the bid letting. The Minnesota Unified Certification Program's (Mn/UCP) Disadvantaged Business Enterprise (DBE) directory, which is found on Mn/DOT's OCR website, includes the names and addresses of all firms that are certified to perform the type of work the contractor is proposing to subcontract.

The Apparent low bidder must submit the following documents to the Good Faith Efforts Review Committee, in Mn/DOT's Office of Civil Rights.

1. Certificate of Good Faith Efforts - attached herein as page 16
2. Bidders List - attached herein as page 17
3. Contractor Payment Form– attached herein as page 18
4. Exhibit A Forms – attached herein as page 11
5. Supporting Documentation to Verify Good Faith Efforts
6. Good Faith Efforts Affidavit - attached herein as page 19
7. OJT Acknowledgement Form - attached herein as page 20

The Apparent low bidder must submit information on the attached **Certificate of Good Faith Efforts** listing all of the DBE and non-DBE firms (including subcontractors, service providers and suppliers) from whom it solicited quotes to provide work and/or supplies for the project.

The Apparent low bidder must also submit a completed **Bidders List**, which must include information on: (1) all DBE and non-DBE firms that submitted a bid/quote for the project; and (2) the proposed firms to be used on the project as subcontractors, service providers and suppliers. The Apparent low bidder must submit a completed Bidders List form even if the company's list of proposed subcontractors, service providers and suppliers and supporting documentation (Exhibit A forms) includes enough participation to meet the contract-specific goal.

Additionally, a completed **Good Faith Efforts Affidavit** must be submitted regardless of whether or not the Apparent low bidder has indicated on its list of proposed subcontractors, service providers and suppliers sufficient participation to meet the contract-specific goal.

The Apparent low bidder must submit completed **Exhibit A** forms for each DBE firm it proposes to utilize on the project, along with copies of the signed agreements and/or affidavits and/or letters of intent committing themselves to the use of the proposed DBE firms for at least the percentage submitted on the Exhibit A forms. See page 10 of the DBE Special Provisions herein for additional information on completing the Exhibit A form.

The Apparent low bidder must also complete and submit the **OJT Acknowledgement** form, and provide additional information, which supports its good faith efforts such as those typical Good Faith Efforts listed on pages (3-5) of these DBE Special Provisions as well as summaries of the

bidder's discussions and/or solicitation efforts of DBE firms (along with the firm names, addresses and contact persons). This information can include but is not limited to copies of solicitation letters and/or faxes to DBE firms.

FAILURE TO SUBMIT DOCUMENTATION

Failure of the apparent low bidder to submit the Certificate of Good Faith Efforts, the Bidders List, Exhibit A forms, Affidavit of Good Faith Efforts and supporting documentation **within three (3) working days** from the time of notification by Mn/DOT's Office of Construction and Innovative Contracting may result in the rejection of the bid and forfeiture of their proposal guaranty.

DBE CONTRACTUAL GOAL

The DBE goal on this contract is _____ percent.

The goal may be attained by means of:

1. A subcontract agreement or affidavit with a Mn/UCP-certified DBE;
2. An equipment lease agreement with a Mn/UCP-certified DBE;
3. A joint venture with a Mn/UCP-certified DBE. This joint venture must be approved by the Mn/DOT Office of Civil Rights prior to bid opening;
4. A purchase agreement with a Mn/DOT certified DBE supplier (sixty percent of the supplier's contracted amount will be credited toward the DBE goal); or
5. Other services pre-approved by the Mn/DOT Office of Civil Rights.

The bidder shall make every reasonable effort to subcontract work to DBEs through good faith negotiations and/or solicitations in advance of the date specified for the opening of bids.

The bidder shall indicate at the time of bid their DBE commitment (which may be different from the goal indicated in this proposal) that they intend to subcontract to DBEs. A bidder who fails to indicate a DBE commitment must fulfill the "total goal" indicated in this proposal.

EVALUATION OF GOOD FAITH EFFORTS

If the apparent low bidder (hereafter ALB) has a DBE commitment that indicates they will accomplish none or only a portion of the Disadvantaged Business Enterprise (DBE) goal, they must demonstrate good faith efforts in attempting to meet that goal. Mn/DOT's Good Faith Efforts Review Committee shall review all "good faith efforts" documents submitted, and any amendments, and make a recommendation to the Director of OCR. If the ALB fails to meet the Good Faith Effort, as noted in this document, the Good Faith Efforts Review Committee will recommend to the Director of OCR that the Good Faith Effort be rejected. The Director will make the final decision if the Good Faith Efforts are to be rejected.

The ALB must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 C.F.R. Part 26 which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation. The DBE Liaison Officer will make the final determination on whether a bidder made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 C.F.R. §26.53, and Appendix A thereto. Compliance will be determined on a case-by-case basis, based on a review of documentation of the following general types of activities:

1. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal/pre-bid meetings, advertising and /or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The ALB must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The ALB must determine with certainty if the DBEs are interested by taking appropriate steps to follow up on the initial solicitations;
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the ALB might otherwise prefer to perform these work items with its own forces;
3. 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;
4. Negotiating in good faith with interested DBEs. The ALB has the responsibility to make a portion of the work available to DBE Subcontractors (including Consultants), Suppliers and Service Providers, and to select those portions of the work or material needs consistent with the available DBE Subcontractors, Service Providers and Suppliers so as to facilitate DBE participation. Evidence of such negotiations include the names, addresses, and telephone numbers of DBEs that were considered; a description of 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;
5. An ALB using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE Subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for an ALB's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ALB's ability or desire to perform the work of a contract with its own organization does not relieve the ALB of the responsibility to make good faith efforts. The ALB is not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable;
6. Rejecting DBEs as being unqualified must be based on a thorough investigation of their capabilities and sound reasons for rejecting DBEs must be articulated. The DBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of proposals/bids in the ALB's efforts to meet the project goal;

7. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by Mn/DOT or the ALB;
8. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services;
9. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State and Federal offices of minority/women business assistance; and other organizations, as allowed on a case-by-case basis, to provide assistance in the recruitment and placement of DBEs; and
10. The performance of other bidders in meeting the contract requirements. For example, when the ALB fails to meet the contract goal, but other bidders meet it, the question may be reasonably raised as to whether, with additional reasonable efforts; the ALB could have met the goal. If the ALB fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, this may be viewed, in conjunction with other factors, as evidence of the ALB having made good faith efforts.

The ALB shall submit signed agreement(s) and/or affidavit(s) committing themselves to the use of Disadvantaged Business Enterprises (DBEs) for at least the percentage submitted with the bid proposal within 3 working days from the time they are notified, by the Office of Construction and Innovative Contracting that they are the ALB. The ALB shall also submit the OJT Acknowledgement form committing themselves to implementing the OJT Program on this project, as outlined in Section **(2041) ON-THE-JOB-TRAINING PROGRAM** of the EEO Special Provisions.

All DBE subcontract agreement(s) including Purchase Orders/Purchase Agreements or affidavit(s) must be accompanied by a completed Description of Work form, which is identified as "Exhibit A," a copy of which is attached hereto. This information is to be submitted to the Mn/DOT Office of Civil Rights within the allowed three (3) working days from the ALB's receipt of the letter notifying the company that they are the ALB, with the DBE subcontract agreement(s) and/or affidavit(s). Failure to submit a completed Exhibit A form with each DBE signed agreement(s) and/or affidavit(s) within the 3-day working day period or any allowed extension will result in the rejection of the bid and the forfeiture of the proposal guaranty.

If the Director of Mn/DOT's Office of Civil Rights determines that adequate good faith efforts have not been demonstrated, the ALB will be notified in writing of the decision and advised of their right to request administrative reconsideration. The rejected bidder will not be approved as a subcontractor or material supplier with the bidder who is ultimately awarded the contract.

ADMINISTRATIVE RECONSIDERATION

Within five days of being informed by Mn/DOT that it is not responsive because it has not documented good faith efforts, an ALB may request administrative reconsideration. The bidder should make this request in writing to the reconsideration official, Lisa Freese, Deputy Commissioner, or designee, at the following address: 395 John Ireland Blvd. St. Paul, Minnesota 55155; Email Address: lisa.freese@dot.state.mn.us, Phone: (651) 366-4807. The reconsideration official will not have played any role in the original determination that the ALB did not make good faith efforts.

Mn/DOT will provide the ALB with a written decision on reconsideration, explaining the basis for the determination. The ALB will have the opportunity to:

1. Provide written documentation or argument on record concerning the issue of whether the ALB met the goal or made adequate good faith efforts to do so; and
2. Meet in person with Mn/DOT or its reconsideration official to discuss the issue of whether the ALB met the goal or made adequate good faith efforts to do so.

In accordance with 49 C.F.R. §26.53, the result of the Mn/DOT's reconsideration process is not subject to administrative appeal to the U.S. Department of Transportation.

COUNTING DBE PARTICIPATION

In accordance with 49 C.F.R. §26.55, Mn/DOT will utilize the following guidelines in determining the percentage of DBE participation that will be counted toward the overall DBE goal:

1. When a DBE participates in the Contract, the value of the work actually performed will be counted;
2. If a firm is not currently certified as a DBE in accordance with the standards of subpart D of the regulations (49 C.F.R. §26.55(f)) at the time of the due date for Bids or offers of the contract, the firm's participation toward any DBE goals will not be counted, except as provided for in 49 C.F.R. §26.87(i);
3. 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;
4. The participation of a DBE Subcontractor toward the Contractor's DBE achievements or the overall goal will not be counted until the amount being counted toward the goal has been paid to the DBE;
 - A. The entire amount of the portion of a construction contract (or other contract not covered by paragraph 49 C.F.R. §26.55 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);
 - B. 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, count toward DBE goals, provided that the Mn/DOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services;
 - C. 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;
 - D. When a DBE performs as a participant in a joint venture, Mn/DOT 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; and

5. Mn/DOT will count expenditures of a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

COMMERCIALLY USEFUL FUNCTION

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, Mn/DOT 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, similar transactions must be examined, 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, Mn/DOT will 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 this program, the DBE may present evidence to rebut this presumption. It may be determined that the firm is performing a commercially useful function given the type of work involved and normal industry practices;
5. Mn/DOT's decisions on matters of whether a DBE performs a commercially useful functions are subject to review by the concerned operating administration, but is not subject to an administrative appeal to US DOT; and
6. Mn/DOT will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
 - a. 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 can not be a contrived arrangement for the purpose of the meeting DBE goals;
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck, which **must be used** on the project at all times;
 - c. 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;
 - d. 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;

- e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement, provided the DBE utilizes **at all times** during the contract at least one company-owned fully operational unit with an employee driver. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE; and
 - f. 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.
7. Mn/DOT will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- a. Mn/DOT will count 100% of the cost of the materials or supplies toward DBE goals if the materials or supplies are obtained from a DBE manufacturer. For purposes of this paragraph, 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.
 - b. Mn/DOT will count 60% of the cost of the materials or supplies toward DBE goals if the materials or supplies are purchased from a DBE regular dealer. 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; and
 - c. 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;
 - d. 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 and not on an ad hoc or contract-by-contract basis;
 - e. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of 49 C.F.R. §26.55(e)(2); and
 - f. Mn/DOT does not allow drop shipments. Materials and supplies obtained from a DBE regular dealer that are drop-shipped to a project site will not be counted toward DBE goals.
8. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, Mn/DOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals,

provided that Mn/DOT has determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services rendered, and that the DBE has been certified by the Mn/UCP as a broker for such services. However, Mn/DOT will not count any portion of the cost of the materials and supplies themselves toward DBE goals.

FAILURE TO FULFILL DBE COMMITMENT

Where it appears that the prime contractor is failing to fulfill the Disadvantaged Business Enterprise subcontracting commitments made, sanctions for noncompliance may be invoked which include, but are not limited to, Mn/DOT withholding progress payments and deducting from the contract proceeds as liquidated damages and not as a penalty, a sum equal to the portion of the DBE commitment not fulfilled.

Where the contractor fails to fulfill the full amount of contracts executed with DBE firms, as required by this contract through no fault of the DBE firms, Mn/DOT will deduct from the contract proceeds, as liquidated damages and not as a penalty, a sum equal to the portion of the DBE goal which has not been met. However, if Mn/DOT reduces the quantity of work subcontracted to the DBE, this provision does not apply.

The provisions of Mn/DOT 1302 are modified to the extent that any bidder failing to perform any or all of the responsibilities contained herein may constitute grounds for the Commissioner of Transportation to declare the bidder (non-responsive) with respect to future contracts.

PROMPT PAYMENT

The prime contractor agrees to pay each subcontractor under this prime contract within ten days of the prime contractor's receipt of payment from the state for undisputed services provided by the subcontractor. The prime contractor must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The prime contractor agrees further to return retainage payments to each subcontractor within ten days after the subcontractor's work is satisfactorily completed. This clause applies to both DBE and non-DBE subcontractors. Any contractor making payments to subcontractors must complete and submit the attached Contractor Payment form.

DBE REPLACEMENT

The contractor shall make good faith efforts, to the satisfaction of the Mn/DOT Office of Civil Rights, to replace Disadvantaged Business Enterprise subcontractors who are unable to perform successfully with another Disadvantaged Business Enterprise, as applicable. Mn/DOT's Office of Civil Rights shall approve all substitutions of subcontractors during the contract performance in order to ensure the substitute firms are eligible DBEs.

Once a contractor submits an affidavit, subcontract or other signed agreements, and an Exhibit "A" (which shall include the DBE business's name and contract amount, and the type of work), the DBE business cannot be substituted by another DBE business for any reason until the following occurs:

1. Mn/DOT's Office of Civil Rights receives a letter requesting approval of the substitution, including the reasons for the substitution; and,
2. Mn/DOT's Office of Civil Rights approves the substitution.

Mn/DOT staff will use all available means to assist the contractor, when requested, in replacing DBEs. This assistance may include but is not limited to:

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

AWARD OF CONTRACT

If all other contract requirements are met as to the awarding of the contract, the contract will be awarded to the lowest responsive bidder who submits all good faith efforts documentation and either meets the DBE goal or demonstrates Good Faith Efforts, as defined above.

The apparent successful bidder shall be notified by Mn/DOT Office of Construction and Innovative Contracting that it is the Apparent Low Bidder (ALB) on the project. The ALB shall submit signed agreement(s) and/or affidavit(s) committing themselves to the use of Disadvantaged Business Enterprises (DBEs) for at least the percentage submitted with the bid proposal within three (3) working days of notification. The ALB shall also submit the OJT Acknowledgement form committing themselves to implementing the OJT Program on this project, as outlined in Section **S-53 (2041) ON-THE-JOB-TRAINING PROGRAM** of the Contract Special Provisions.

All DBE subcontract agreement(s) including Purchase Order/Purchase Agreement or affidavit(s) must be accompanied by a completed description of work form which is identified as "Exhibit A," a copy of which is attached hereto. This information is to be submitted to the Mn/DOT Office of Civil Rights within the allowed three (3) working days from receipt of notification of being the apparent low bidder, with the DBE subcontract agreement(s) and/or affidavit(s). Failure to submit a completed Exhibit A form with each DBE signed agreement(s), purchase order and/or affidavit(s) within the 3-day working day period or any allowed extension will result in the rejection of the bid and the forfeiture of the proposal guaranty.



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

A contract with the Prime Contractor cannot be awarded unless this form is submitted with a signed subcontract, purchase order or affidavit for every DBE. The DBE subcontractor is to fill out all of the appropriate information and sign this form.
PLEASE PRINT CLEARLY OR TYPE.

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

MUST BE COMPLETED BY THE DBE PRINCIPAL

Letting Date: _____ State Project Number: _____
 Prime Contractor: _____ Phone #: _____
 DBE Subcontractor: _____ Phone #: _____
 DBE Principal Name: _____ Total Subcontract \$: _____
 DBE Participation Claimed: Percent _____% Amount \$ _____

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

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

5. If equipment to be used is other than what is listed in your DBE certification file please answer the following:
 - a. Will the renting or leasing include any of the following: (Attach a copy of the lease/rental agreement(s)).
Equipment _____ Insurance _____ Operator _____ or Maintenance _____
 - b. Lessor's name: _____
Amount to be paid: _____ Number of days to be used: _____
6. Will there be any other firm(s) providing work listed in your (DBE) subcontract?
If yes, answer the following: Firm's Name: _____ \$ amount of the work: _____
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.
12. Please list all subcontracts that your firm will be performing during the current construction season including non-DBE work:
(Attach additional sheet if necessary.)

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

Section (B):

TO BE COMPLETED ONLY BY THE DBE TRUCKER

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. If ITO's or trucking companies are to be used on this project answer the following:

| | Name of ITO/Company | Dollar Amount of Contract/Agreement | Number of Dump Trucks, Tractors/Trailers (specify) |
|----|----------------------------|--|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |

Section (C): (All DBE Subcontractors, including Trucking firms, 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).

DBE Company: _____

DBE Principal: _____
Signature Title Date

Section (D):

TO BE COMPLETED BY Mn/DOT OFFICE OF CIVIL RIGHTS STAFF PERSON

Project Number: _____ District # _____
Mn/DOT OCR Staff Person: _____ Phone No. _____
Project Engineer: _____ On-site Phone #: _____
Office Phone #: _____

Section (E):

TO BE COMPLETED BY PROJECT ENGINEER WHEN THE DBE'S PORTION OF WORK IS 1/3 TO 1/2 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. 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 Mn/DOT Office of Civil Rights Staff Person assigned to this project.

Project Engineer: _____ Date: _____

MINNESOTA DEPARTMENT OF TRANSPORTATION DBE TRUCKING GUIDELINES

In accordance with 49 C.F.R. Part 26, the Minnesota Department of Transportation (Mn/DOT) will use these guidelines to determine whether a firm is eligible to be counted as a DBE trucking firm, a DBE truck broker, or a regular dealer. It is the responsibility of the prime contractor and the DBE trucking firm (or the DBE truck broker) to ensure the following guidelines are met on all Mn/DOT projects. Mn/DOT must approve the DBE trucking participation prior to the award of contract.

DBE TRUCKING FIRM REQUIREMENTS

- A. DBE trucking firms must comply with all Minnesota Trucking Regulations, Mn/DOT Standard Specifications, and Contract provisions.
- B. DBE trucking firms must own at least one fully operational truck that is used on a day-to-day basis. For purposes of defining "truck," a single axle dump truck is considered a "truck;" a tandem axle dump truck is considered a "truck;" and, a combination of a tractor and trailer is considered a "truck. A DBE company-owned truck utilizing an employee driver **must be** used on the project at all times during the contract.
- C. DBE trucking firms may lease additional trucks, except from (prime) contractors for whom they are doing work to fulfill a DBE goal. However, as noted above, a DBE company-owned truck with an employee driver **must be** used on the project at all times during the contract. Valid lease agreements must be submitted to Mn/DOT as part of the certification process. A valid lease agreement must include all of the following:
 - 1. Be a minimum 6 months in length;
 - 2. Include an agreement to fixed monthly payment amounts;
 - 3. Designate the DBE as the person controlling the workflow of the equipment;
 - 4. Driver must be on the DBE's payroll; and,
 - 5. The DBE trucking firm must be responsible for fuel, maintenance, insurance, payment of salary, and benefits to the drivers, if applicable.
- D. The DBE trucking firm must control the management aspects such as scheduling.
- E. Trucks owned or leased by DBE trucking firms must be placarded with the DBE Trucking firm's Logo.
- F. The financial risk that is assumed by the DBE trucking firm must be real and substantial. The haul slips must be issued in the name of the DBE trucking firm. All DBE trucking firms must keep full and accurate records, including operating expenses, operating revenue, miles operated, and payroll information as may be required by the Mn/DOT Office of Civil Rights.
- G. **REGULAR DEALER**
For a DBE trucking firm to be recognized by Mn/DOT as a regular dealer for DBE credit, a firm must be an established regular business that engages, as its principal business, and under

its own name, in the purchase and sale of the products and goods in its normal course of business. Mn/DOT will evaluate the following criteria to determine whether a DBE trucking firm qualifies as a regular dealer in bulk items such as sand and gravel:

1. Does the firm own or lease the material site?
2. Does the firm arrange for testing and certification of materials?
3. Is the firm solely responsible for securing necessary permits?
4. Is the firm responsible for excavating the material?
5. Is this activity the principal business of the firm?

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 if the person both owns and operates the distribution equipment of the products. Any supplementing of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis, and shall meet the requirements B and C of these trucking guidelines.

Distribution equipment is defined as including the machinery used to extract, load, and transport the bulk items. The distribution equipment required for the above-referenced bulk items varies from industry to industry.

H. COUNTING DBE PARTICIPATION

A certified DBE trucking firm will be given DBE participation credit only for the work performed using the firm's own resources, as approved in their certification. When a certified DBE trucking firm performs as a regular dealer of bulk items listed in (G) above, Mn/DOT will count 60% of the cost of the bulk items toward the DBE goal, and 100% of the value of the transportation services toward the DBE goal. If the DBE trucking firm's performance on the contract is limited to transporting the bulk items, Mn/DOT will count only the trucking portion of the contract at 100%. Mn/DOT does not allow drop shipments to a project site and no DBE credit will be given toward a goal for drop shipments of materials or supplies.

I. DBE TRUCK BROKER REQUIREMENTS

Certified DBE businesses that own no trucks for use to fulfill a DBE goal will be counted as trucking brokers, provided that they have been certified by the Mn/UCP as trucking brokers. DBE participation credit will be given for the actual amount of the brokerage fee and not for the amount of the subcontract.

J. RENTAL EQUIPMENT OPERATORS

Certified DBE businesses that own no trucks but own trailers for rent or lease for use to fulfill a DBE goal will be counted as rental equipment operators/firms, provided they have been certified by the Mn/UCP as equipment rental businesses. DBE participation credit will be given for the actual amount of the trailer rental fee and not for the amount of the subcontract.

K. CERTIFIED TRUCK SCHEDULE

All DBE trucking firms must submit a certified truck schedule to Mn/DOT. The truck schedule will list all the trucks owned as defined in B and C above by the DBE trucking firm. Only the trucks listed on the schedule and approved by Mn/DOT may be used to perform work for credit toward DBE goals. The DBE trucking firm will submit a revised schedule within two (2) weeks of a change in certified vehicles.

L. MONITORING

Annual monitoring is based on the total dollar amount paid to the DBE trucking firm by the prime contractor(s) on all projects for the year in review.

M. VIOLATIONS

Any certified trucking firm or broker must comply with the above stated guidelines. If any violations occur, Mn/DOT has the right to initiate removal of DBE eligibility proceedings.



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

CERTIFICATE OF GOOD FAITH EFFORTS

S.P. _____

Prime Contractor _____ Low Bid _____ Goal _____

Total DBE Commitment _____ (_____ %)

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

| Subcontractor/Supplier/Service provider | DBE? | | Phone | Dates, Method of Contact | | Description of Work | Dollar Amount of Quote |
|---|------|----|-------|--------------------------|-------|---------------------|------------------------|
| | Yes | No | | Letter | Phone | | |
| 1. | | | | | | | |
| 2. | | | | | | | |
| 3. | | | | | | | |
| 4. | | | | | | | |
| 5. | | | | | | | |
| 6. | | | | | | | |
| 7. | | | | | | | |
| 8. | | | | | | | |
| 9. | | | | | | | |
| 10. | | | | | | | |

(Make additional copies of this form as necessary)



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

BIDDERS LIST

S.P.: _____

Prime Contractor _____ Low Bid _____ Goal _____

Total DBE Commitment _____ (_____ %)

List all comparative quotes of participants performing on the project and participants that bid, including DBEs and non-DBEs.
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 DBE status, are required to complete and submit this form to Mn/DOT'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 engineer, no later than ten (10) days after receiving payment from Mn/DOT.

| Contractor's Name, Address, Telephone Number | | Original Contract Amount | Committed DBE % | Actual DBE % to Date |
|--|------------------------|--------------------------|---|----------------------|
| | | | | |
| Name of Subcontractor/Supplier | DBE? (Check if Yes) | 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)

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

GOOD FAITH EFFORTS AFFIDAVIT

STATE OF MINNESOTA
COUNTY OF _____

I, _____ hereby acknowledge that I am the _____
of _____, that has been identified as the apparent
successful bidder of the State Project.

S.P. _____.

The undersigned, having been first duly sworn, says that the information given in the above certificate is true and correct to the best of his or her knowledge and belief.

Signed _____
Bidder or authorized representative

Subscribed and sworn to before me

This _____ day of _____, 2003

Notary Public

My commission expires _____, 20_____

On-the-Job Training Acknowledgment

S.P: _____ Apparent Low Bidder: _____

On behalf of the company identified above, I acknowledge that:

- 1 This project (*check one*) { does not contain an On-the-Job Training requirement
(*proceed to 5, below*)
 does contain an On-the-Job Training requirement for:
_____ hours utilizing at least _____ Trainees; and
(*Enter hours listed in Proposal*) (*Enter No. of Trainees listed in Proposal*)
- 2 If awarded this project, the above-named company is responsible for implementing the OJT program on this project; and
- 3 The above-named company shall provide an OJT Training Plan to the Project Engineer within ten days after the date of award of this project, or at the Pre-construction meeting, whichever occurs later; and
- 4 The above-named company (*check one*) { is a participant in the OJT Pilot Program
(*proceed to 5, below*)
 is not

5 _____
Signature *Title* *Date*

Please submit this form to the Office of Civil Rights
Submission of this form is required before contract may be awarded.

Office of Civil Rights
395 John Ireland Blvd
Mail Stop 170
St. Paul, MN 55155
Phone: (651) 366-3073
Fax: (651) 366-3129