# CITY OF DULUTH, MN

## SOLICITATION NO. 27-AA01

## REQUEST FOR PROPOSALS

## FOR

## RECONNECTING COMMUNITIES PLANNING STUDY

as part of the Duluth I-35 Community Access Revitalization Plan,
a Reconnecting Communities Project

City of Duluth Project No. 2233
State Project No. 118-010-030

**PROPOSALS DUE:**
**Wednesday, December 16, 2026, 3:00 p.m., Central Time**

Issued November 20, 2026

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## 1. PROJECT OVERVIEW

The City of Duluth, Minnesota, is seeking a consultant to develop the Duluth I-35 Community Access Revitalization Plan. The City of Duluth was awarded a Federal Highway Administration (FHWA) Reconnecting Communities Pilot (RCP) Program Community Planning Grant to study the existing I-35 arterial highway facility within the Duluth city limits, with focus areas in West Duluth and Downtown Duluth. This plan, conducted in partnership with the Minnesota Department of Transportation (MnDOT) and the Duluth-Superior Metropolitan Interstate Council (MIC), aims to improve connectivity along and across the existing corridor and allow for land use opportunities to be realized. The final plan, which is to be completed by December 29, 2028, will recommend multiple locally preferred concepts for the I-35 corridor that provide long-term direction for future transportation and land use decisions.

The RCP Program is a federal initiative managed by the U.S. Department of Transportation to reconnect neighborhoods divided by past transportation infrastructure like highways. The purpose of the RCP is to fix or remove infrastructure barriers that limit mobility and economic development; to improve access to daily needs like jobs, education, healthcare, food, and recreation; and to reverse the generational damage caused by legacy transportation infrastructure like highways. The purpose of the Community Planning Grants is for localities to evaluate alternatives to determine a locally preferred solution. The USDOT prioritizes several major types of transformative infrastructure solutions designed to knit divided neighborhoods back together:

a. Infrastructure Removal: Full or partial removal of elevated viaducts, depressed freeways, or rail lines. Frees up land for housing, restores original street grids, and removes localized pollution.
b. Capping and Lids: Constructing a physical "deck" or "cap" over a depressed highway. Creates new walkable green spaces, parks, and civic hubs without altering highway traffic.
c. Pedestrian Walkways and Overpasses: Building dedicated pedestrian bridges or active transportation overpasses. Restores safe, ADA-accessible neighborhood-to-neighborhood pedestrian and bicycle connectivity.
d. Linear Parks and Trails: Transforming rights-of-way into multi-use trail networks and greenways. Improves public health, provides safe bike routing, and offers local climate resilience features.
e. Roadway Redesigns & Complete Streets: Narrowing wide, high-speed arterial roads and adding protective bike lanes/sidewalks, lowers vehicle speeds. Reduces pedestrian fatalities and creates pleasant urban spaces.

f. Public Transit Integrations: Creating dedicated bus rapid transit (BRT) lanes, light rail linkages, or new transit hubs. Enhances access to regional jobs, schools, grocery stores, and healthcare.

## 2. FUNDING REQUIREMENTS

Because of the funding involved, this project has a Disadvantaged Business Enterprise (DBE) component. The DBE goal is DBE-Neutral. Specific information on what that means for proposers and what documentation must be submitted is provided in Appendix F.

Additional supplementary provisions as identified in Appendix C are also applicable to this solicitation and project.

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. Additional Civil Rights and Non-Discrimination Assurances are found in Appendix D.

## 3. BACKGROUND

I-35 was extended northward, beginning in West Duluth in the 1970s and working its way east, reaching the edge of Downtown in 1971. The early phases of construction divided the West Duluth neighborhoods in typical ways for highway construction in that era, with the displacement of many residents and businesses. This divide had long-term impacts on the surrounding community. As the Interstate construction continued into the Downtown area in the 1990s, the divide was further continued with the construction of 12 vehicle travel lanes, including frontage roads and on and off ramps, that created a large divide between Downtown and the waterfront tourism district/convention center. In the final phases, tunnels and pedestrian bridges were incorporated to provide access between the surrounding neighborhoods and the waterfront recreation areas. Segments have now reached the end of their lifespans, with aspects of the original design functionally obsolete, and have started to be reconstructed.

## 4. SCOPE OF WORK:

### Task 1: Planning Process Initialization

This task includes refining the planning process, clarifying tasks, identifying timelines, and processes for communication between project managers, committees, key community partners, and the consultant team.

An important element in the community engagement plan is establishing a functional and well-supported Plan Steering Committee (PSC). The PSC will consist of 20-25 community members representing a broad range of perspectives and will be key in reviewing critical documents and assisting in making decisions in the process. In addition, focus groups will be needed throughout the process consisting of stakeholders in the surrounding business and residential areas and modal interests such as freight, transit, and active transportation. The consultant will be expected to manage and oversee the PSC. The consultant will also be responsible for managing and administering a participation incentive as identified in the grant application.

Deliverables:

1) Formation of Plan Steering Committee, including schedule for ongoing meetings
2) Detailed project schedule with roles, responsibilities, tasks, and timelines

**Task 2: Establish a Framework for Community Engagement**

To ensure broad community participation, the selected consultant must execute a highly creative, multi-layered engagement strategy designed to meet stakeholders where they are, including hard-to-reach community members. Engagement tools may include, but are not limited to:

a. Quantitative input such as surveys
b. Qualitative input such as focus groups and listening sessions
c. Digital outreach including a dedicated, accessible project web page and social media channels
d. Advanced visualizations such as 2D and 3D renderings, slider tools (before/after configurations), and fly-through animations
e. In-person and virtual events such as traditional open houses, interactive community socials, design charrettes, and virtual town halls
f. Grassroots outreach such as door-knocking campaigns
g. Immersive learning such as guided site tours
h. Pop-up experiences such as tabling at events or storefront locations.
i. Utilization of community engagement liaisons to lead targeted engagement efforts leveraging their local experience to connect with the public
j. Presentations at Planning Commission, Transportation Commission, and City Council meetings

This task includes assembling a “toolbox” or communications plan that outlines when the tools are most effective, where each is anticipated to be used in this planning process, and

procedures for external communications. Venue rental costs, audio-visual equipment, food, copying, poster boards, etc. are the consultant's financial responsibility.

Deliverables:

1) Public Engagement Plan
2) Web page
3) Public event to raise awareness of the project and energize the public for participation.

**Task 3: Identify Existing Conditions and Form a Problem Statement**

A clear and concise definition of the problem including the barriers and human health impacts should be defined in consultation with the PSC and formalized by the broader public engagement. This problem statement will serve as the basis for all future work and ground the project in a clear mission. This task will also include analysis focused on transportation barriers, human health impacts, land use impacts and opportunities, understanding of travel patterns, origin and destinations, travel times, multi-modal travel, and planned transportation infrastructure projects, including Northern Lights Express (NLX).

This task includes:

a. Produce a profile of I-35 including the planning, funding, construction, and management of the highway: summarize the process that resulted in each segment of I-35 including maps and photos; show vehicle traffic counts, street configuration, and transit systems over time; and provide a summary of efforts needed to keep I-35 functioning over the years.
b. Conduct a comprehensive review of land use, transportation, parks/trails, utility/infrastructure, resiliency, and business district plans for areas adjacent to and affected by I-35 including, but not limited to, review of the following plans: Imagine Duluth 2035, Duluth Area I-35 Corridor Plan, Duluth Waterfront Collective's Highway 61 Revisited Project, Bayfront Area Traffic Modelling and Special Event Traffic Control Plan, Spirit Valley Core Investment Area Plan, Imagine Downtown 2035, the Downtown Development Strategy, bikeways plans, and safe-routes-to-school plans.
c. Gather data on the impacts from past transportation decisions, including displacement of homes and businesses, and the level of impacts (economic, community, housing, transportation) that continue to affect the surrounding neighborhoods and community.

d. Conduct a physical and spatial analysis including land use, zoning, historic resources, parks, environmental resources, and transportation system characteristics and resilience.
e. Complete a market study to identify current and forecasted supply and demand for housing, commercial, tourism/convention, and industrial/port uses in the area surrounding the highway.
f. Compile at least ten case studies that exhibit the harmonious coexistence of arterial roadways with successful business districts similar in scale to Downtown Duluth and West Duluth. Document the design characteristics and functioning of projects, with photos, maps, and written descriptions of the characteristics of each design, including the social, economic, transportation, economic, and real estate market conditions.
g. Using multiple public input strategies, conduct an inventory of the issues and concerns that the public experiences with the current arrangement of I-35. Use this issues inventory, the plan summaries, and existing conditions information to form a clear and concise definition of the problem.

Deliverables:

1) Existing conditions report
2) Summary of plans
3) Case study report
4) Market study
5) Issues inventory
6) A clear concise problem statement

**Task 4: Define Project Objectives**

Create a list of objectives that, when met, will solve the problems identified in Task 3. Obtain general agreement on the scope and scale of each objective. These objectives will be used to evaluate corridor design scenarios generated in Task 5 and refined in Task 6. Include measurable metrics; for instance, if an objective is, “make walking from downtown to the convention center comfortable and safe,” what characteristics must be reached for the walk to be considered safe and comfortable, and what elements make it unsafe and uncomfortable?

Through robust community engagement, determine the relative priority of the objectives that will be approved by the PSC.

Deliverables:

1) A PSC-approved list of objectives (with metrics) and their relative priority and acceptance by the community.

**Task 5: Generate Community Design Scenarios**

Use the large body of information gathered in Task 3, generate multiple community design scenarios that meet the objectives of Task 4.

Tasks include:

a. Invite the public to submit community design scenario ideas through a virtual and/or in-person environment. Utilize community engagement liaisons to assist the public in generating and drawing community design scenario ideas.
b. Draft up to eleven community design scenarios, including up to three scenarios for the West Duluth section, up to five scenarios for the Downtown section, and up to three scenarios to evaluate options for the rest of the corridor. Each scenario needs to be developed at a level of detail that allows reviewers to perceive the street-level experience using high-quality 2D drawings and 3D renderings. The design team should include members with experience creating highly functional mixed-use districts that include entertainment and hospitality uses as well as multi-modal transportation systems that support them.
c. Each scenario should have a high-level description of its socioeconomic, transportation, land use, environmental, resiliency, and operational characteristics.
d. Evaluate each community design scenario's ability to meet objectives from Task 4.

Deliverables:

1) A list of potential community design scenarios proposed via public engagement.
2) Up to eleven community design scenarios, with visualizations and summaries.
**3)** Evaluations of each community design scenario based on how well they solve the problem and meet community objectives.

**Task 6: Refine and Analyze Community Design Scenarios**

Using multiple community engagement tactics, seeking public input on the community design scenarios generated in Task 5.

Using a workshop or charrette environment, invite the public to review community design scenario elements for each corridor focus area (West Duluth and Downtown) and refine scenario designs based on how well the scenario design elements meet objectives in Task 4.

Distill the community design scenarios into 2-3 for the West Duluth focus area, 2-3 for the Downtown focus area, and up to 2 scenarios for the rest of the I-35 corridor (5-8 scenarios total).

Create a report on the land use, transportation, and socioeconomic, and real estate implications of each community design scenario with an eye toward how they meet the objectives of Task 4.

The land use analysis should consider how well the community design scenarios meet the community's needs for housing, office, hotel, restaurant, retail, entertainment/tourism, convention and cultural/park spaces. The analysis should score how well the surrounding land uses interact with the proposed transportation system. This will require street level analysis to identify the urban design elements that are necessary to make the land uses successful.

The transportation analysis should estimate the cost to construct and construction feasibility of each community design scenario. It should review the performance of the transportation system, being sure to consider the safety and comfort of the most vulnerable users. The vehicle transportation analysis should be designed and configured for measurement of local and regional trips, recognizing induced travel demand and trip evaporation phenomena. Transit function should be analyzed for efficient transit vehicle movement, but also ready and comfortable access for transit customers who are pedestrians and cyclists at the beginning and end of each transit trip.

Socioeconomic analysis of the community design scenarios should identify projected changes in employment, income levels, demographic characteristics, and housing availability as a result of the infrastructure changes.

The real estate market analysis should identify the value of the public and private spaces created in each community design scenario, including, but not limited to, real estate values, changes in business activity, tourism, and housing markets, and overall community benefits not typically measured by markets. The real estate market analysis should estimate the cost to construct the public (non-transportation system) and private spaces, including the level of public assistance needed to make construction feasible.

<u>Deliverables:</u>

1) Revised community design scenarios for each corridor focus area
2) Report analyzing the land use, transportation, socioeconomics, and real estate market implications of each community design scenario

**Task 7: Select Final Scenarios to Advance to Conceptual Design**

Present the 5-8 scenarios and their associated analyses from Task 6 in a public process to select which scenarios should be developed into a conceptual design.

Present the 5-8 scenarios that are recommended for development into conceptual designs to the following boards to seek their recommendations:

City of Duluth Transportation Commission, City of Duluth Planning Commission, Duluth Transit Authority Board, Metropolitan Interstate Council Board and MIC's Transportation Advisory Committee, Bicycle-Pedestrian Advisory Committee, and City Council.

Present the recommendations from the community boards and general public on the community design scenarios to be developed into conceptual designs to the Plan Steering Committee for final recommendations on conceptual design development.

Deliverable:

1) Community design scenarios to be developed into conceptual designs

**Task 8: Develop Conceptual Designs of Recommended Community Scenarios**

Prepare drawings and analysis of the recommended community scenarios to the conceptual design level. Include analysis of land use, transportation, socioeconomic and real estate market conditions that are expected to result from the recommended community design scenarios. Propose and design mitigation strategies to address community concerns identified in Task 7.

**Deliverables**:

1) Conceptual designs of the recommended community scenarios
2) Land use, transportation, socioeconomics, and real estate market analysis of the recommended community design scenarios

**Task 9: Plan Implementation**

Create a blueprint showing how the conceptual designs might be built. Specific funding sources and strategies, a phasing schedule, technical analysis including an environmental scan, and cost estimates should be included.

Create a list of additional planning work, studies, and engineering that will need to be done to implement the conceptual designs.

Deliverables**:**

1) A blueprint showing how the conceptual designs might be built including specific funding sources and strategies

2) A package with all documents created during this process in .pdf format and associated editable native files.

## 5. CALENDAR OF EVENTS (subject to change)

| Date | Action |
|---|---|
| Friday, November 20, 2026 | Posting of Solicitation |
| Tuesday, December 1, 2026 (11:59 p.m.) | Deadline to submit questions on the RFP |
| Friday, December 4, 2026 | City response to questions posted |
| Wednesday, December 16, 2026 (3:00 p.m.) | Proposals are due |
| Wednesday, January 20, 2027 | Consultant Selection Interviews (tentative) |
| Friday, January 22, 2027 | Consultant Selection |
| Monday, March 1, 2027 | Project Begins |
| Friday, December 29, 2028 | Planned Completion Date |

Questions & Answers. Any questions regarding this RFP must be submitted by e-mail to the Purchasing Office at purchasing@duluthmn.gov no later than the date indicated on the Calendar of Events. Answers to the questions will be posted as an Addendum to the RFP.

Addenda to the RFP. If the City deems it necessary to revise any part of this RFP before the proposal response date, the City will post an addendum to its website at http://www.duluthmn.gov/purchasing/bids-request-for-proposals/. Although an e-mail notification will be sent, it is the Bidder's responsibility to periodically check the website for any new information. Any addenda issued must be acknowledged on the Proposal Sheet attached as Appendix A.

## 6. PROPOSAL CONTENTS

Proposals not following the specified format will not be reviewed. The proposal shall consist of a technical proposal and a separately sealed cost proposal. The technical proposal shall be limited to 25 pages plus a cover letter (the page limit excludes all information requested in paragraph 6.1) a. Approach to Work below as well as any appendices that must be submitted with the proposal). Proposals that exceed this limit will not be reviewed.

**TECHNICAL PROPOSAL:** To assist us in evaluating your team's characteristics, abilities and approach to the project, please provide the information requested below. Structure your response to items below such that your approach and high-level strategies are clear, while also providing any important technical details. For each item below requesting documentation, provide a description of 3-5 projects demonstrating the criteria requested. **DO NOT** include any cost proposal information in the technical proposal.

1) **Approach to Work**
   a. Provide short biographies for your proposed team, identify your project manager and key leads. For each key contributor, describe how their background and experience aligns with the proposed project. Include (1) applicable licensures, (2) experience in their proposed role in this solicitation, and (3) a concise list of relevant projects within the past seven years. Responses to this paragraph are excluded from the page limit.

   b. Describe the team's proposed project delivery approach for meeting the project scope and describe a clear process, key milestones, and a proposed timeline. Provide a breakdown of the hours for each employee needed to complete each task. Briefly describe the team's proposed approach to communication and coordination.

   c. Demonstrate understanding of the project's concept and required services, including technical challenges likely to be encountered in the course of plan development, and other risks to successfully developing the plan in accordance with scope, schedule, and budget.

2) **Community Assessment and Planning**
   a. Experience with community reconnection projects (projects aiming to address mobility concerns related to a highway or arterial and/or projects that focus on building or restoring a more complete multimodal network)

   b. Experience working in small regional centers and/or communities with similar qualities, concerns, and conditions as Duluth

   c. Relevant experience with assessing highway impacts on communities including, light, noise, air, and water quality concerns

3) **Community Engagement**

a. Demonstrated experience in creative, multi-layered engagement strategies and authentic public participation plans

b. Experience developing compelling, informative, and accessible analysis reports and documentation for multiple audiences including agency subject matter experts, policymakers, and community members.

**4) Mobility Analysis**

a. Experience conducting mobility analyses for all modes in a transportation network (walking, cycling, driving, public transit, assisted mobility and freight) and scales (macro-, meso-, and microscopic), including analysis of large events on the transportation system

b. Relevant experience developing modeling assumptions and techniques that balance and reflect diverse needs and concerns such as community health, non-vehicular mobility concerns, regional tourism, commuter, and freight mobility needs

c. Describe the team's proposed approach to addressing the issue of induced demand and trip evaporation.

d. Describe how, while conducting the mobility analysis work, your team will approach navigating potential conflicts between conventional traffic demand modeling practices and reaching a multi-modal solution that meets community sustainability goals.

**5) Community Design Scenario Generation and Analysis**

a. Relevant experience preparing 2D and 3D renderings of land use and transportation elements at a level of detail for analysis of conditions at the street/building wall level

b. Relevant experience designing transportation solutions for the safe and convenient use of non-vehicular modes in business districts and residential areas, including planning for the successful design of land uses adjacent to the transportation system

**6) Market Analysis**

a. Experience with market analysis to measure the financial impact of transportation systems on housing, commercial, tourism/convention, and industrial/port land uses

b. Experience characterizing and quantifying demand for multiple segments of housing, hospitality, food and beverage, office, and mixed-use spaces adjacent to the highway corridor.

c. Experience assessing technical and financial feasibility of conceptual development projects.

**7) Roadway Conceptual Design**

a. Relevant experience applying context sensitive design techniques for all phases of highway design projects, particularly the conceptual design phase.

**8) Ability to Meet Schedule**

a. Describe the capacity of the project team to support and complete the work as described. Include organizational depth, demonstrating your team's flexibility to provide staffing based on project demands, emergent project needs, and the anticipated availability of key individuals for the years of this project (including subconsultants). Describe the project team's current and planned workload, and any concurrent projects to determine if staff are sufficiently available.

b. Provide an organizational chart outlining the team's structure, including reporting relationships as well as subconsultant relationships.

**9) Past Performance**

a. Provide client references for the projects listed above. Specify the client, location, project name, participating individuals and role on team (principal, project director, etc.), and brief description (type of work, implementation results or status). The City reserves the right to contact other references in addition to those provided by the respondent. Do not list projects which do not include key staff proposed in this contract.

**10) Approach to Meet the DBE Goal:**

a. Describe your methodology used when developing your DBE Participation Plan. Provide your approach to meaningfully engaging and monitoring DBEs over contract life.

**COST PROPOSAL:** Provide one unbound copy and six paper copies of the cost proposal in a separate sealed envelope, clearly marked on the outside "Cost Proposal" along with the

responder's official business name and address. Terms of the proposal as stated must be valid for the project length of time.

The consultant must include a not-to-exceed total project cost, as well as subtotals for each work scope/task listed in the RFP. The cost proposal shall include all of the following:

- A cover/transmittal letter
- A breakdown of the hours by task for each employee. This shall be in the same format as the work plan in the Approach to Work section above, with the addition of costs.
- Hourly rates for each specific employee proposed (not general rates by category).
- Identification of anticipated direct expenses and rates for miscellaneous charges such as mileage and copies.
- Identification of any assumption made while developing this cost proposal.
- Identification of any cost information related to additional services or tasks. Include this in the cost proposal but identify it as additional costs and do not make it part of the total project cost.
- Proposals must be signed by an authorized official. If the official signs the Proposal Cover Sheet attached as Appendix A, this requirement will be met.
- Do NOT include any technical information or required appendices forms in the cost proposal.

## 7. SELECTION

The proposals will be reviewed by City Staff. The intent of the selection process is to review proposals and make an award based upon qualifications as described herein. A 100-point scale will be used to create the final evaluation recommendations. The factors and weighting on which proposals will be judged are:

| | Item | Percent |
|---|---|---|
| 1 | Approach to work (project understanding, overall schedule, staff experience) | 10% |
| 2 | Community assessment and planning (experience with community assessments; proposal indicates significant research, data, and analysis in approach to the project) | 15% |
| 3 | Community engagement (experience in creative community engagement; proposal includes a combination of diverse engagement tools and a robust public engagement plan) | 15% |

| | | |
|---|---|---|
| 4 | Mobility assessment (expertise in mobility analysis for all modes in a transportation network, demonstrates understanding of multimodal systems for all users at all scales of analysis) | 10% |
| 5 | Community design scenario generation and analysis (proposal highlights the workshop/charrette and allocates skilled design professionals and resources to meet the design and visual goals of the RFP; demonstration of understanding all aspects of the analysis for each scenario) | 20% |
| 6 | Market analysis (proposal adequately describes an approach for traditional market analyses in addition to measuring benefits and costs of various development scenarios) | 10% |
| 7 | Roadway conceptual design (team's skills and abilities to facilitate selection of community preferred concepts; demonstrated expertise in context sensitive roadway design and) | 5% |
| 8 | Ability to meet schedule | 5% |
| 9 | Past performance | 5% |
| 10 | Ability to meet DBE goals | 5% |

**1) Interviews**

The City may interview top ranked firms from the proposal evaluation. If interviews are conducted, they will be held in person and subsequent rankings of firms shall be determined by the City using the combined results of interviews and proposal submittals. The purpose of the interview is to clarify the technical approach, qualifications, and capabilities of the interviewed firms. Consultants invited to interview are to bring the assigned key person(s) named by the Consultant in the Proposal and may bring other key personnel named in the Proposal. The Consultant shall not bring individuals who do not work for the Consultant or are not on the project team without advance authorization by the City.

**2) Right to Award to next ranked Consultant**

If a contract is executed resulting from this solicitation and is terminated within 90 days, the City may return to the solicitation process to award to the next highest ranked responsive Consultant by mutual agreement with such Consultant. New awards thereafter are also extended this right.

**3) Repeat of Evaluation:**

If no Consultant is selected at the conclusion of all the steps, the City may return to any step in the process to repeat the evaluation with those proposals active at that step. The City shall then sequentially step through all remaining steps as if conducting a new evaluation process. The City reserves the right to terminate the process if no proposals meet its requirements.

## 8. PROPOSAL SUBMISSION

Submit one (1) unbound original and six (6) bound copies, with the cost proposal sealed separate from the technical proposal, in a package marked "27-AA01 Reconnecting Communities Planning Study" by the submission deadline.

a. Proposals must be signed by an authorized official. If the official signs the Proposal Cover Sheet attached as Appendix A, this requirement will be met.
b. Any addenda issued must be acknowledged on the Proposal Cover Sheet.
c. The Consultant **must not** include any cost information within the technical proposal, and the cost proposal must be sealed separately.
d. Proposals must be mailed to and received by the Contact listed in paragraph 9 below by the proposal submission deadline identified in the Calendar of Events.

## 9. CONTACT

All questions concerning the project shall be directed to:

City of Duluth – Purchasing Department
411 W 1st Street, Room 120 City Hall
Duluth, MN 55802
purchasing@duluthmn.gov

## 10. LIMITATIONS

1) This Request for Proposal does not commit the City of Duluth to award a contract or pay costs incurred in the preparation of the proposal, or to procure a contract for services or supplies.

2) The Proposal shall not in any way include any restrictions on the City of Duluth. The Consultant shall NOT provide proposed contract language.
3) The City of Duluth specifically reserves the right to accept or reject any or all proposals, to negotiate with any qualified source, to cancel in part or in its entirety the Request for Proposal, to waive any requirements, to investigate the qualifications of any proposal, to obtain new proposals, or proceed to have the service provided in any way as necessary to serve the best interests of the City of Duluth.
4) The selected consultant must sign the City of Duluth Standard Professional Services Agreement, a sample of which is attached as Appendix B. Any questions concerning this agreement should be asked PRIOR to proposal submittal. These questions should be directed to Purchasing@DuluthMN.gov.
5) All materials submitted in response to this RFP will become property of the City and will become public record after the evaluation process is complete and an award decision made.
6) Prior to entering into an agreement with the City, the Consultant shall furnish proof that it has met all legal requirements for transacting business in the State of Minnesota.
7) By submitting a proposal, each Bidder understands, represents, and acknowledges that:

    a. Their proposal has been developed by the Bidder independently and has been submitted without collusion with and without agreement, understanding, or planned common course of action with any other vendor or suppliers of materials, supplies, equipment, or services described in the Request for Proposals, designed to limit independent bidding or competition, and that the contents of the proposal.

    b. The proposal has not been communicated by the Bidder or its employees or agents to any person not an employee or agent of the Bidder.

    c. There is no conflict of interest. A conflict of interests exists if a Bidder has any interest that would actually conflict, or has the appearance of conflicting, in any manner or degree with the performance of work on the project. If there are potential conflicts, identify the municipalities, developers, and other public or private entities with whom your company is currently, or have been, employed and which may be affected.

    d. It is not currently under suspension or debarment by the State of Minesota, any other state, or the federal government.

e. The company is either organized under Minnesota law or has a Certificate of Authority from the Minnesota Secretary of State to do business in Minnesota, in accordance with the requirements in M.S. 303.03.

f. The company is not in default on any payments, taxes, or other fees due to the City.

## 11. APPENDICES

Appendix A – Proposal Cover Sheet (must be submitted with proposal)

Appendix B – Agreement Template

Appendix C – Supplementary Provisions

Appendix D – FHWA Title VI Assurances Appendices A and E

Appendix E – Anti-Lobbying Certification (must be submitted with proposal)

Appendix F – DBE Special Provisions, Revised 9/22/26 (must be submitted with proposal)

Appendix G – E-Verify Subcontractor Certification (for Proposer use if needed)

**APPENDIX A - SUBMISSION COVER SHEET**
**CITY OF DULUTH**
**27-AA01 RFP for Reconnecting Communities Planning Study**

| **Bidder Information:** | |
|---|---|
| Submitter Name | |
| Mailing Address | |
| Contact Person | |
| Contact Person's Phone Number | |
| Contact Person's E-Mail Address | |
| Federal ID Number | |
| Authorized Signature | |
| Name & Title of Authorized Signer | |
| Email of Authorized Signer | |

## ACKNOWLEDGMENT OF ADDENDA

| | |
|---|---|
| ADDENDUM # | INITIAL/DATE |
| ADDENDUM # | INITIAL/DATE |
| ADDENDUM # | INITIAL/DATE |
| ADDENDUM # | INITIAL/DATE |
| ADDENDUM # | INITIAL/DATE |

**AGREEMENT FOR PROFESSIONAL SERVICES BY AND BETWEEN**

Click or tap here to enter text. **& CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), by and between the City of Duluth, hereinafter referred to as City, and Click or tap here to enter text. located at Click or tap here to enter text., hereinafter referred to as Consultant for the purpose of rendering services to the City.

WHEREAS, the City has requested consulting services for Click or tap here to enter text., (the "Project"); and

WHEREAS, Consultant has represented itself as qualified and willing to perform the services required by the City; and

WHEREAS, Consultant submitted a proposal to provide services for the Project (the "Proposal"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the City desires to utilize Consultant's professional services for the Project;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Services

Consultant will provide services related to the Project as described in Consultant's Proposal (the "Services"). Consultant agrees that it will provide its services at the direction of the Click or tap here to enter text. ("Click or tap here to enter text."). In the event of a conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed controlling.

II. Fees

It is agreed between the parties that Consultant's maximum fee for the Project and Services shall not exceed the sum of Click or tap here to enter text. Dollars ($Click or tap here to enter text.) inclusive of all travel and other expenses associated with the Project, payable from Fund Click or tap here to enter text.. All invoices for services rendered shall be submitted monthly to the attention of the Click or tap here to enter text.. Payment of expenses is subject to the City's receipt of reasonable substantiation/back-up supporting such expenses. Payment terms shall be net 35 per Minnesota Statutes §471.425.

III. General Terms and Conditions

a. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.

b. Assignment

Consultant represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City. The Primary Consultant(s) assigned to this project will be Click or tap here to enter text. (the "Primary Consultant"). The Primary Consultant shall be responsible for the delivery of professional services required by this Agreement and, except as expressly agreed in writing by the City in its sole discretion, the City is not obligated to accept the services of any other employee or agent of Consultant in substitution of the Primary Consultant. The foregoing sentence shall not preclude other employees of Consultant from providing support to the Primary Consultant in connection with Consultant's obligations hereunder.

c. Data and Confidentiality, Records and Inspection

a. The City agrees that it will make available all pertinent, non-privileged information, data and records under its control for Consultant to use in the performance of this Agreement, or assist Consultant wherever possible to obtain such records, data and information.
b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.
c. Consultant agrees that all work created by Consultant for the City is a "work made for hire" and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work ("City Property"). Consultant further agrees that to the extent the work is not a "work made for hire" Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will be original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have been previously assigned, licensed or otherwise encumbered.

1. Records shall be maintained by Consultant in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
2. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
3. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
4. Consultant shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement Consultant will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

d. Consultant Representation and Warranties. Consultant represents and warrants that:
    a. Consultant and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
    b. Consultant and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
    c. Consultant has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Consultant will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.
    d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Consultant is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Consultant contrary to the terms of any instrument or agreement.

e. There is no litigation pending or to the best of the Consultant's knowledge threatened against the Consultant affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Consultant to perform its obligations hereunder.

f. The Consultant will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

e. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by Click or tap here to enter text., unless terminated earlier as provided for herein.

Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Consultant which gave rise to such breach.

f. Independent Contractor

a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third-party beneficiary of this Agreement. Consultant and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant's employees while so engaged, and any and all claims whatsoever on behalf of Consultant's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and

P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of intentional or negligent acts or omissions of Consultant or its employees while performing the work specified by this Agreement.

b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.

c. (For a government entity that is non-federal) Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

g. Indemnity

To the fullest extent permitted by law, Consultant shall defend, indemnify, and hold City and its employees, officers and agents harmless from and against any and all costs or expenses, claims or liabilities, including but not limited to, reasonable attorney's fees and expenses, whether asserted by itself or any third party, including claims arising from the acts, omissions, negligence, or misconduct of Service Provider or that of its agents, employees, or contractors. The obligations shall include, but not be limited to, the obligations to defend, indemnify, and hold harmless the City in all matters where claims of liability against the City are alleged to be or could be found to arise out of acts or omissions of Service Provider or are passive, derivative, or vicarious of the negligent or intentional acts or omissions of Consultant arise out of or relate to the services in this Agreement or Service Provider's negligent, intentional, or wrongful acts or omissions, including breach of any duty in this agreement, of Consultant. The obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. This Section shall survive the termination of this Agreement for any reason. Consultant shall not have the obligation to indemnify the City for its intentional, willful or wanton acts. **The Consultant understands this provision may affect its rights and may shift liability.**

h. Insurance

a. Consultant shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

5. Workers' compensation insurance in accordance with the laws of the State of Minnesota.

i. Commercial General Liability and Automobile Liability Insurance with limits not less than **$1,500,000** Single Limit, shall be in a company approved by the City of Duluth; and shall provide for the following:

Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. Umbrella coverage with a "form following" provisions may make up the difference between the commercial general and auto liability coverage amounts and the required minimum amount stated above.

ii. Professional Liability Insurance in an amount not less than $1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, Consultant hereby commits to provide at least 60 days' notice prior to any change to the Professional Liability Insurance policy or coverage; and in the event of any change, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this this paragraph which will provide unbroken protection to the City, or in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

iii. **City of Duluth shall be named as Additional Insured** under the Commercial General Liability and Automobile Liability. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance. Consultant to provide Certificate of Insurance evidencing such coverage with notice to City of cancellation in accordance with the provisions of the underlying insurance policy included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

b. Certificates showing Consultant is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
c. The City shall be named as an additional insured on each liability policy other than the professional liability and the workers' compensation policies

of the Consultant.

d. The certificates shall provide that the policies shall not be cancelled during the lift of this Agreement without advanced notice being given to the City at least equal to that provided for in the underlying policy of insurance.

e. Except as provided for in Section 8.a.iv above, Consultant hereby commits to provide notice to City at least 30 days in advance of any change in the insurance provided pursuant to this Section 8 or in advance of that provided for in the underlying insurance policy or policies whichever is longer. For the purposes of Section 8 of this Agreement, the term, "changed", shall include cancellation of a policy of insurance provided hereunder and any modification of such policy which reduces the amount of any coverage provided thereunder below the amounts required to be provided hereunder or otherwise reduces the protections provided under such policy to City

i. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

**City:**

City of Duluth
411 W First Street
City Hall Room Click or tap here to enter text.
Duluth MN 55802
Attn: Click or tap here to enter text.

**Consultant:**

Click or tap here to enter text.
Click or tap here to enter text.
Click or tap here to enter text.
Attn: Click or tap here to enter text.

j. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:

a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this

Agreement.

b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

k. Laws, Rules and Regulations

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

l. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

m. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

n. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

o. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be

executed by the same parties who executed the original agreement or their successors in office.

p. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

*[Remainder of this page intentionally left blank. Signature page to follow.]*

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date of attestation shown below.

**CITY OF DULUTH**

By:_____
Mayor

Attest:

By:_____
City Clerk

Date:_____

Countersigned:

_____
City Auditor

Approved as to Form:

_____
City Attorney

Click or tap here to enter text.
By:_____

Its:_____
Title of Representative

Date:_____

APPENDIX C to 27-AA01

City of Duluth
Supplementary Provisions for State and/or Federally Assisted Activities
27-AA01 RFP for Reconnecting Communities Planning Study

1. Disbursements
   (a) No money under this Contract shall be disbursed by the City to any Contractor unless the Contractor is in compliance with the Federal Agency requirements with regard to accounting and fiscal matters to the extent they are applicable.
   (b) Unearned payments under this Contract may be suspended or terminated upon the Contractor's refusal to accept any additional conditions that may be imposed by the Federal Agency at any time; or if the grant, if applicable, to the City under which this Contract is made is suspended or terminated.

2. Subcontracting Requirements
   (a) The Contractor shall include in any subcontract the clauses set forth in these City of Duluth Supplementary Provisions in their entirety and shall also include a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.
   (b) The Contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the City's prior written approval of the subcontractors. The City will not approve any subcontractor for work covered by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by a Federal Agency or the Secretary of Labor, United States Department of Labor, to receive an award of such subcontract.

3. E-Verify Certification.
   Per MN Statutes 16C.075, by submitting a proposal, contractor certifies that as of the date services for this project will be performed, Contractor and all subcontractors have implemented or are in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on this project.

   Additionally, prior to the initiation of services for this project, Contractor must obtain written certification from all subcontractors who will participate in the performance of the contract. A subcontractor certification has been included with this solicitation for Contractor use.

4. Breach of Contract.
   The City may, subject to the Force Majeure provisions below and in addition to its other rights under the Contract, declare the Contractor in breach of the Contract by written notice thereof to the Contractor, and terminate the Contract in whole or in part, in accordance with Section 4, Termination, for reasons including but not limited to any of the following:
   (a) Failure to begin the Work within the time specified in the Contract;
   (b) Failure to perform the Work with sufficient labor, equipment, or material to insure the completion of the specified Work in accordance with the Contract terms;
   (c) Unsatisfactory performance of the Work;
   (d) Failure or refusal to remove material, or remove and replace any Work rejected as defective or unsatisfactory;
   (e) Discontinuance of the Work without approval;

(f) Failure to resume the Work, which has been discontinued, within a reasonable time after notice to do so;

(g) Insolvency or bankruptcy;

(h) Failure to protect, to repair, or to make good any damage or injury to property;

(i) Breach of any provision of the Contract;

(j) Misrepresentations made in the Contractor's bid/proposal; or

(k) Failure to comply with applicable industry standards, customs, and practice.

5. Termination.

For Cause: If the Contractor is in breach of the Contract, the City, by written notice to the Contractor, may terminate the Contractor's right to proceed with the Work. Upon such termination, the City may take over the Work and prosecute the same to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any additional cost incurred by the City in its completion of the Work and they shall also be liable to the City for liquidated damages for any delay in the completion of the Work as provided below. If the Contractor's right to proceed is terminated, the City may take possession of and utilize in completing the Work such materials, tools, equipment, and plant as may be on the site of the Work and necessary therefore.

For Insufficient Funds: City shall have the right to terminate this contract immediately without other cause in the event that all or a portion of the funds that the City intends to use to fund its obligations under the contract have their source with the State or Federal government or any agency thereof and said source reduces or eliminates their obligation to provide some or all of the funds previously committed by it to fund City's payment obligations under the Contract. The City agrees that termination hereunder will not relieve the City of its obligation to pay Contractor for Work satisfactorily performed and reasonable costs incurred prior to the effective date.

Without Cause: Notwithstanding anything herein to the contrary, the City may terminate this Contract at any time upon written notice given by the City (for any reason, including the convenience of the City) to the Contractor at least thirty (30) days prior to the effective date of the termination of this Contract. The City agrees that termination hereunder will not relieve the City of its obligation to pay Contractor for Work satisfactorily performed and reasonable costs incurred prior to the effective date of the termination provided that Contractor has not committed a breach of this Contract. Nothing contained in this section shall prevent either party from pursuing or collecting any damages to which it may be entitled by law.

6. Suspension of Contract.

The City may immediately suspend this Agreement in the event of a total or partial government shutdown due to the failure to have an approved budget by the legal deadline. During this suspension, any work performed is deemed unauthorized and undertaken at risk of non-payment.

7. Force Majeure.

The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the Work due to any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency; any acts of the City; causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in their performance of some other contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions; nor to

any delay of any Subcontractor occasioned by any of the causes specified above. The Contractor shall promptly notify the City in writing within ten (10) days of the delay. Upon receipt of such notification, the City shall ascertain the facts and the cause of the delay. If, upon the basis of facts and the terms of the Contract, the delay is properly excusable, the City shall extend the time for completing the Work for a period of time commensurate with the period of excusable delay.

8. Contract Work Hours and Safety Standards Act.

Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor shall ensure that no laborer or mechanic involved in the Work is required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. In addition, state or local funding sources may impose more strict requirements or higher rates for wages, benefits, and overtime rates. Contractors must review the labor cost bidding data form included with the bid package and compensate workers accordingly.

9. Rights to Inventions Made Under a Contract or Agreement.

For any contracts involving the "substitution of parties, assignment or performance of experimental, developmental, or research work", Contractor shall comply with the requirements of 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

10. Clean Air Act and Federal Water Pollution Control Act.

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Contractor agrees to include this provision in any subcontract exceeding $150,000 that is financed in whole or in part with Federal funds.

11. Energy Standards.

Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

12. Suspension and Debarment.

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. A contract award must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM.gov), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 19898 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

13. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).

Contractors who apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the above tier that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352.Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

14. Procurement of Recovered Materials.

In the performance of this contract, the Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. This shall include making maximum use of products containing recovered materials as designated by the Environmental Protection Agency (EPA) unless (i) the materials cannot be acquired competitively and within the timeframe required by the contract performance schedule; (ii) the materials designated by the EPA do not meet contract performance requirements; or (iii) the materials cannot be acquired for a reasonable price. Information about this requirement, along with the list of EPA- designated items, is available at the EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

15. Telecommunications and Video Surveillance Services or Equipment

In the performance of this contract, Contractor/Supplier shall comply with Public Law 115-232, Section 889, which prohibits the procurement or use of covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, use of video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) is prohibited.

In addition, telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country is prohibited.

16. Domestic Preferences for Procurements.

As appropriate and to the extent consistent with law, Contractor shall, to the greatest extent practicable under a Federal award, supply and/or use goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section, "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber;

and lumber.

17. Access to Records.

Contractor agrees to comply (and require any subcontractors, successors and/or assignees to comply) with all applicable provisions governing the Federal Highway Administration's (FHWA) access to records, accounts, documents, information, facilities and staff. Contractor also agrees to comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. Contractor must keep records, reports, and submit the material for review upon request to FHWA, or its designee in a timely, complete and accurate way. Additionally, Contractor must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

18. Preventing Personal Conflicts of Interest (48 CFR §52.203-16) *(for contracts over $350k that include a requirement for services by contractor employee(s) that involve performance of acquisition functions closely associated with inherently government functions for or on behalf of a federal agency or department. If only a portion of the contract is for acquisitions functions, contracting officer shall limit applicability of the clause to that portion of the contract that is for those services. Don't insert the clause with a self-employed individual if the acquisition functions are to be performed entirely by the self-employed individual, rather than an employee of the contractor.)* This section is included as required by 48 CFR §3.1106

(a) ***Definitions.*** As used in this clause—

*Acquisition function closely associated with inherently governmental functions* means supporting or providing advice or recommendations with regard to the following activities of a Federal agency:

(1) Planning acquisitions.
(2) Determining what supplies or services are to be acquired by the Government, including developing statements of work.
(3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.
(4) Evaluating contract proposals.
(5) Awarding Government contracts.
(6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services.
(7) Terminating contracts.
(8) Determining whether contract costs are reasonable, allocable, and allowable.

*Covered employee* means an individual who performs an acquisition function closely associated with inherently governmental functions and is—

(1) An employee of the contractor; or
(2) A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.

*Non-public information* means any Government or third-party information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 522) or otherwise protected from disclosure by statute, Executive order, or regulation; or
(2) Has not been disseminated to the general public and the Government has not yet determined whether the information can or will be made available to the public.

*Personal conflict of interest* means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract. (A *de minimis* interest that would not "impair the employee's ability to act impartially and in the best interest of the Government" is not

covered under this definition).

(1) Among the sources of personal conflicts of interest are—
  (i) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household;
  (ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
  (iii) Gifts, including travel.

(2) For example, financial interests referred to in paragraph (1) of this definition may arise from—
  (i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;
  (ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);
  (iii) Services provided in exchange for honorariums or travel expense reimbursements;
  (iv) Research funding or other forms of research support;
  (v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
  (vi) Real estate investments;
  (vii) Patents, copyrights, and other intellectual property interests; or
  (viii) Business ownership and investment interests.

(b) ***Requirements.*** The Contractor shall—

(1) Have procedures in place to screen covered employees for potential conflicts of interest, by—
  (i) Obtaining and maintaining from each covered employee, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:
    (A) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household.
    (B) Other employment or financial relationships of the covered employee (including seeking or negotiating for prospective employment or business).
    (C) Gifts, including travel; and
  (ii) Requiring each covered employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.

(2) For each covered employee—
  (i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the contract for this the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency;
  (ii) Prohibit use of non-public information accessed through performance of a Government contract for personal gain; and
  (iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract.

(3) Inform covered employees of their obligation—
  (i) To disclose and prevent personal conflicts of interest;
  (ii) Not to use non-public information accessed through performance of a Government contract for personal gain; and
  (iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this clause; and

(6) Report to the Contracting Officer any personal conflict-of-interest violation by a covered employee as soon as it is identified. This report shall include a description of the violation and the proposed actions to be taken by the Contractor in response to the violation. Provide follow-up reports of corrective actions taken, as necessary. Personal conflict-of-interest violations include—
   (i) Failure by a covered employee to disclose a personal conflict of interest;
   (ii) Use by a covered employee of non-public information accessed through performance of a Government contract for personal gain; and
   (iii) Failure of a covered employee to comply with the terms of a non-disclosure agreement.

(c) ***Mitigation or waiver.***
   (1) In exceptional circumstances, if the Contractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of this clause, the Contractor may submit a request through the Contracting Officer to the Head of the Contracting Activity for—
      (i) Agreement to a plan to mitigate the personal conflict of interest; or
      (ii) A waiver of the requirement.
   (2) The Contractor shall include in the request any proposed mitigation of the personal conflict of interest.
   (3) The Contractor shall—
      (i) Comply, and require compliance by the covered employee, with any conditions imposed by the Government as necessary to mitigate the personal conflict of interest; or
      (ii) Remove the Contractor employee or subcontractor employee from performance of the contract or terminate the applicable subcontract.

(d) ***Subcontracts.*** The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts—
   (1) That exceed the simplified acquisition threshold, as defined in 48 C.F.R. § 2.101 on the date of the subcontract award; and
   (2) In which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions (i.e., instead of performance only by a self-employed individual).

Contractors shall include the preceding language in all subcontracts.

**FHWA Title VI Assurances, Appendix A**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21, including any amendments thereto.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as

the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

**FHWA Title VI Assurances, Appendix E**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21, including any amendments thereto.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq*.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq*.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq*.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION
(Appendix A to 49 CFR 20 - To be submitted with each bid or offer exceeding $100,000)

The undersigned, [Company] _____ certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, [Company] _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq*., apply to this certification and disclosure, if any.

_____
Signature of Contractor's Authorized Official

_____
Name and Title of Contractor's Authorized Official

_____
Date

DEPARTMENT OF TRANSPORTATION

# Disadvantaged Business Enterprise (DBE) Special Provisions

| Project Information | |
|---|---|
| **State Project Number**: 118-010-030 | **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,
- Operates in a nondiscriminatory manner,
- 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 Management System. 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:

https://mnucp.dbesystem.com/

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. Pursuant to 49 C.F.R. § 26.111, to qualify for credit toward the DBE goal, a DBE firm must be certified.

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

## Before Contract Award

*DBE Goal*

The DBE conscious goal for this project is _____% or ■ DBE-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.

*DBE-Neutral Goal*

If the DBE goal is DBE-Neutral (DBEN), 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 a DBEN goal.** While DBE participation is encouraged on proposals with a DBEN goal, responders are not required to submit GFE documentation specified in **Table A, other than the information page (Parts A-C) and the Bidders' lists (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:

- to qualify for credit toward the DBE goal, a DBE firm must be certified on or before the proposal due date.
- hiring a DBE as a subcontractor or consultant to do project work,
- purchasing materials from a DBE (typically one hundred percent of the manufacturer's contracted amount, sixty percent of the supplier's contracted amount, or forty percent of the distributor's contracted amount will count toward the goal),
- leasing equipment from a DBE,
- entering into a joint venture with a DBE, or
- 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><br>**☐ Construction Manager/General Contractor administered by MnDOT**<br><br>**☐ Design-build administered by MnDOT** | **☐ Construction Contract administered by local governmental unit**<br><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, including bid/quote for each firm and the DBE Regular Dealer/Distributor Affirmation Form for each Regular Dealer/Distributor.<br>• Parts A, B, C, 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 D and E of the GFE consolidated form. | • Exhibit A for each DBE participating on the project, including bid/quote for each firm and the DBE Regular Dealer/Distributor Affirmation Form for each Regular Dealer/Distributor.<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, including bid/quote for each firm and the DBE Regular Dealer/Distributor Affirmation Form for each Regular Dealer/Distributor.<br>• Parts A, B, C, 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 parts D and 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, including bid/quote for each firm and the DBE Regular Dealer/Distributor Affirmation Form for each Regular Dealer/Distributor.<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). |
| **IF DBE-NEUTRAL** | **IF DBE-NEUTRAL** |
| • **No DBE Participation:** Parts A-C of the Exhibit B, GFE Consolidated form and submit the bidders list or bidder/quoter information electronically via CRL.<br>• **DBE Participation:** Parts A-C of the Exhibit B, GFE Consolidated form, submit the bidders list or bidder/quoter information electronically via CRL, and an Exhibit A for each DBE participating on the project, including bid/quote for each firm and the DBE Regular Dealer/Distributor Affirmation Form for each Regular Dealer/Distributor. | • **No DBE Participation:** Parts A-E of the Exhibit B, GFE Consolidated form.<br>• **DBE Participation:** Parts A-E of the Exhibit B, GFE Consolidated form and an Exhibit A for each DBE participating on the project, including bid/quote for each firm and the DBE Regular Dealer/Distributor Affirmation Form for each Regular Dealer/Distributor. |

| 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.<br><br>**Format and Location**<br>The responder must submit documents via email to ocrformsubmissions.DOT@state.mn.us. | **Date and Time**<br>The submission due date is the 5th calendar day after a final cost has been negotiated.<br><br>**Format and Location**<br>The responder must submit documents via email to professionaltechnicalcontractforms.dot@state.mn.us. |
| ☐ **Construction Manager/General Contractor** | ☐ **Design-build** |
| **Date and Time**<br>The submission is due on the date and time the price proposal is due.<br><br>**Format and Location**<br>The responder must submit documents via email to ocrformsubmissions.DOT@state.mn.us. | **Date and Time**<br>Civil Rights submission documents in Table A are due with the proposal.<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. | |

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 prior 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 prior 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 or any portion of its work, (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 or reduce its work, (3) demonstrate good cause to terminate the DBE as described in **Attachment 4.** The responder must complete the online form requesting approval of the termination of a DBE subcontract or any portion of its work. The responder must attach any supporting documentation to demonstrate good cause. Once approved, the responder should 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.

*DBE Commitments and Continuing Good Faith Efforts*

It is the Prime's responsibility to meet its original commitments to DBE firms and make good faith efforts to meet the project goal, based on final contract amount. If there is a change order to a contract on which there is a DBE contract goal, then that contract goal applies to the full contract amount as modified by the change order. 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.

<table>
<tr><th colspan="2">Table C – Required Payment Submissions</th></tr>
<tr><td>☐ Design-bid-build administered by MnDOT<br>☐ Construction Manager/General Contractor administered by MnDOT<br>☐ Design-build administered by MnDOT</td><td>☐ Construction Contract administered by local gov’t unit</td></tr>
<tr><td rowspan="2">Within 10 business days of the responder’s receipt of MnDOT payment:<ul><li>the responder must pay its subcontractors</li><li>the payment information to subcontractors should be entered via CRL no later than one calendar week after payment.</li></ul>When final payment has been made to subcontractors:<ul><li>the responder must submit information about the responder’s final payment to each subcontractor via CRL.</li><li>the responder must submit a Total Payment Affidavit to ocrformsubmissions.dot@state.mn.us.</li></ul></td><td>Within 10 business days of the responder’s receipt of MnDOT or Local Government Unit payment:<ul><li>the responder must pay its subcontractors</li><li>the responder must submit a Contractor Payment Form to MnDOT OCR on a monthly basis. All subcontractors, if they have lower tiered subcontractors, regardless of DBE status, are required to complete Contractor Payment Forms. The subcontractor should submit its Contractor Payment Form to the Prime Contractor, and the Prime Contractor must submit all Contractor Payment Forms to OCR.</li></ul></td></tr>
<tr><td>🖃 PT contract administered by MnDOT<br>Within 10 business days of the responder’s receipt of MnDOT payment:<ul><li>the responder must pay its subcontractors</li><li>the responder must submit a Contractor Payment Form to ocrformsubmissions.dot@state.mn.us on a monthly basis. All subcontractors, if they have lower tiered subcontractors, regardless of DBE status, are required to complete Contractor Payment Forms. The subcontractor should submit its Contractor Payment Form to the Prime Contractor, and the Prime Contractor must submit all Contractor Payment Forms to OCR.</li></ul>When a final invoice has been submitted to MnDOT:<ul><li>the responder must submit a Total Payment Affidavit and Final Contractor Payment Form to ocrformsubmissions.dot@state.mn.us.</li></ul></td></tr>
</table>

# 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
- Exhibit E – DBE Regular Dealer/Distributor Affirmation Form

## Attachment 1 – Counting and Commercially Useful Function (CUF)

### 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(s)).

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, except as provided for in § 26.87(j) and § 26.55.

(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.

   A. 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. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

2. 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 (including transportation costs) toward DBE goals.

   A. For purposes of this section (f), a regular dealer is a firm that owns (or leases) and operates, 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 sufficient quantities, and regularly sold to or leased to the public in the usual course of business.

   B. Items kept and regularly sold by the DBE are of the "general character" when they share the same material characteristics and application as the items specified by the contract.

   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. A DBE supplier performs a CUF as a regular dealer and receives credit for 60 percent of the cost of materials or supplies (including transportation cost) when all, or at least 51 percent of, the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.

   D. A DBE may be a regular dealer in such bulk items as petroleum products, steel, concrete or concrete products, gravel, stone or asphalt without owning and operating a place of business as provided in 49 C.F.R. §26.55(e)(2)(ii) if the firm both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term operating lease agreement and not on an ad hoc or contract-by-contract basis[1].

   E. A DBE supplier of items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification) should be considered in the same manner as a regular dealer of bulk items per D above. If the DBE supplier of these items does not own or lease distribution equipment, as descried above, it is not a regular dealer.

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

3. If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, count 40 percent of the cost of materials or supplies (including transportation costs). A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40 percent for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

(g) With respect to materials or supplies the responder purchases from a DBE which is neither a manufacturer, a regular dealer, nor a distributor, MnDOT will count the entire amount of fees or commissions that MnDOT deems to be reasonable, including transportation charges for the delivery of materials or supplies. MnDOT, however, will not count any portion of the cost of the materials or supplies themselves toward DBE goals.

[1] Credit associated with trucking is calculated differently than the delivery of materials or supplies performed as part of a regular dealer CUF.

**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 within 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 USDOT.

**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 also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives 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 hauling 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 community organizations; contractors' groups; local, State, and Federal 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 their designee, will determine whether or not the responder made adequate GFEs to meet the goal. The determination will be sent via email to the responder. If the Director determines that the responder failed to make adequate GFE, the responder may request an administrative reconsideration of that determination (49 CFR §26.53(d)).

## 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.

The responder must send the request via email, MnDOT must **receive** it no later than the fifth business day after the responder receives notice of the Director's determination.

### Reconsideration Process

The Commissioner of MnDOT will designate officials to serve as Reconsideration Officials. The Reconsideration Officials shall not have had 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 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 prior written approval from MnDOT OCR, terminate a DBE or any portion of its work listed in the original DBE commitment (submitted Exhibit A). When MnDOT or a local recipient initiates a termination or reduction of work the responder is not required to obtain prior written approval from OCR. Notification of the change to the DBE and OCR is still requested. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include, but are not limited to, when a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. 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)(3), 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 or any portion of its work 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/

## Attachment 1 – Counting and Commercially Useful Function (CUF)

### 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(s)).

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, except as provided for in § 26.87(j) and § 26.55.

(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.

   A. 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. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

2. 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 (including transportation costs) toward DBE goals.

   A. For purposes of this section (f), a regular dealer is a firm that owns (or leases) and operates, 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 sufficient quantities, and regularly sold to or leased to the public in the usual course of business.

   B. Items kept and regularly sold by the DBE are of the "general character" when they share the same material characteristics and application as the items specified by the contract.

   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. A DBE supplier performs a CUF as a regular dealer and receives credit for 60 percent of the cost of materials or supplies (including transportation cost) when all, or at least 51 percent of, the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.

   D. A DBE may be a regular dealer in such bulk items as petroleum products, steel, concrete or concrete products, gravel, stone or asphalt without owning and operating a place of business as provided in 49 C.F.R. §26.55(e)(2)(ii) if the firm both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term operating lease agreement and not on an ad hoc or contract-by-contract basis[1].

   E. A DBE supplier of items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification) should be considered in the same manner as a regular dealer of bulk items per D above. If the DBE supplier of these items does not own or lease distribution equipment, as descried above, it is not a regular dealer.

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

3. If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, count 40 percent of the cost of materials or supplies (including transportation costs). A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40 percent for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

(g) With respect to materials or supplies the responder purchases from a DBE which is neither a manufacturer, a regular dealer, nor a distributor, MnDOT will count the entire amount of fees or commissions that MnDOT deems to be reasonable, including transportation charges for the delivery of materials or supplies. MnDOT, however, will not count any portion of the cost of the materials or supplies themselves toward DBE goals.

[1] Credit associated with trucking is calculated differently than the delivery of materials or supplies performed as part of a regular dealer CUF.

**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 within 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.

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1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of the meeting DBE goals.

2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates using drivers it employs.

4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

5. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

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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.

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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.**

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(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 community organizations; contractors' groups; local, State, and Federal 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 their designee, will determine whether or not the responder made adequate GFEs to meet the goal. The determination will be sent via email to the responder. If the Director determines that the responder failed to make adequate GFE, the responder may request an administrative reconsideration of that determination (49 CFR §26.53(d)).

## 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.

The responder must send the request via email, MnDOT must **receive** it no later than the fifth business day after the responder receives notice of the Director's determination.

**Reconsideration Process**

The Commissioner of MnDOT will designate officials to serve as Reconsideration Officials. The Reconsideration Officials shall not have had 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 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 prior written approval from MnDOT OCR, terminate a DBE or any portion of its work listed in the original DBE commitment (submitted Exhibit A). When MnDOT or a local recipient initiates a termination or reduction of work the responder is not required to obtain prior written approval from OCR. Notification of the change to the DBE and OCR is still requested. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include, but are not limited to, when a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. 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)(3), 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 or any portion of its work 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 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. Pre-Award Commitment: ☐ Post-Award Commitment: ☐

**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 #: _____

Total Subcontract $: _____

DBE Participation Claimed: Percent _____% Amount $ _____

*Please see instructions to determine DBE Participation to claim.

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

1. List the work scopes to be performed and the associated North American Industry Classification System (NAICS) codes for each item:

| Description/Scope of work | Associated NAICS Code | Applicable dollar amount |
|---|---|---|
| | | |
| | | |
| | | |

2. Will your firm be renting equipment from the prime or the firm you are contracting with? If yes, list the cost of the rental.
   a. Yes ☐ No ☐ Cost of rental:
3. Will you be subcontracting to any other firms? YES ☐ NO ☐
   If yes, answer the following: Firm's Name: _____ $ amount of the work: _____

**Section (C)** (DBE firms manufacturing or who are regular dealers/distributors/brokers)

Is your firm the manufacturer of the materials you are providing? YES ☐ NO ☐

Is your firm a material supplier (including bulk items), distributor or broker? YES ☐ NO ☐
If yes, complete the DBE Regular Dealer-Distributor Affirmation form.

*All material suppliers, distributors, or brokers must submit a copy of their quotes with this form. Please ensure quantities are included.

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

1. How many fully operational units will be yours or other DBEs? _____(Estimated total hours: _____)
2. How many units will be non-DBEs? _____ (Estimated total hours: _____)

**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

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**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

Office of Civil Rights-Good Faith Efforts Consolidated Form

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<br>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).<br>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**

DEPARTMENT OF TRANSPORTATION

**Office of Civil Rights– Good Faith Efforts Consolidated Form**

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.

| **State Project Number:** | **Payment Reporting Period:** **to** | **Prime Contractor:** |
|---|---|---|
| **Invoice Number:** | **Date Paid by State:** | **Subcontractor:** |

**Submittal Instructions**: Contractors making payments to subcontractors, regardless of their tier or DBE status, are required to complete and submit this form to State's Office of Civil Rights (OCR) until final payment is made. Contractor must include payments to subcontractors, service providers, sub-consultants and 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. Contractor must submit one copy of this form to State's OCR (at Russell.Simmons@state.mn.us); State's Project Manager, Consultant Services (at ptinbox@state.mn.us) no later than 10 days after receiving a payment from the State.

| **(A) Contractor's Name, Address & Telephone Number** | | **(B) Total Contract Amount** | **(C) Committed DBE %** | **(D) Actual DBE % to Date** |
|---|---|---|---|---|
| Name: | | | | |
| Address: | | | | |
| Phone: | | | | |

| **(E) Name of Subcontractor(s)/Supplier(s)** | **(F) DBE?** *(indicate)* | **(G) Description of Work** | **(H) Subcontract Amount** |
|---|---|---|---|
| 1. | ☐ | 1. | 1. |
| 2. | ☐ | 2. | 2. |
| 3. | ☐ | 3. | 3 |

| **(I) Amount of Current Payment** | **(J) Date Subcontractor Payment Issued** | **(K) Amount Paid to Date** | **(L) % Paid to Date** | **(M) Final Payment? (Yes or No)** |
|---|---|---|---|---|
| 1. | 1. | | 1. | 1. Select |
| 2. | 2. | | 2. | 2. Select |
| 3. | 3. | | 3. | 3. Select |

| **(N) Company Official's Signature, Title & Contact Info** | | **(O) Date Signed** | **(P) Name, Title & Contact Info for the Individual Completing the Report** | |
|---|---|---|---|---|
| Signature: | | | | |
| Title: | | | Title: | |
| Phone Number: | Email: | | Phone Number: | Email: |

(This form may be submitted in an alternate format)

# Disadvantaged Business Enterprise (DBE) Total Payment Affidavit

*MnDOT Office of Civil Rights*

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 has been performed by a DBE on this project. **If the dollar value of the DBE firm's total work is less than the original subcontract, please describe below.**

State Project Number: _____

STATE OF MINNESOTA
COUNTY OF _____
I,_____, being first duly sworn, do depose and say that:

1. I am the authorized representative of_____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 this contract/ project:

## *Disadvantaged Businesses*

| | *Name of Firm* | *Dollar Amount Of Subcontract* | *Retainage Amount* | *Bond Held* | *Total Dollar Amount* |
|---|---|---|---|---|---|
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| 6 | | | | | |
| 7 | | | | | |
| 8 | | | | | |
| Total | | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

4. If the total dollar value of a DBE firm's portion of the work was less than the original amount committed to be performed by the DBE, you must explain below and provide supporting documentation.

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

Signed: _____

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 email one to MnDOT's Office of Civil Rights at: OCRformsubmissions.dot@state.mn.us

OMB Control #2105-0586 (Exp. 5/31/2027)

U.S. Department of Transportation

# DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number: 118-010-030

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? ☐ **YES** ☐ **NO**

**(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below. If "NO" Continue.)**

a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characterisics (aka specialty items)?

☐ **YES** ☐ **NO** **(If "YES," Go to Question 2. If "NO" Continue.)**

b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

☐ **YES** ☐ **NO*** **(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below.**

***If 1.,1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)**

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

☐ **YES** ☐ **NO[1]**

**(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. STOP here. Read and sign the affirmation below.)**

**[1] If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)**

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility) ? ☐ **YES[2]** ☐ **NO[3]**

a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased ? ☐ **YES[2]** ☐ **NO[3]**

**[2] If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.**

**[3] If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.**

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

**Printed Name and Signature of DBE Owner/Authorized Representative:**

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

**Printed Name and Signature of Bidder's Authorized Representative:**

Appendix G to 27-AA01

**State of Minnesota – E-Verify Subcontractor Certification**

Effective July 21, 2011, state law mandates that contracts "for services valued in excess of $50,000 must require certification from the vendor and any subcontractors that, as of the date services on behalf of the state of Minnesota will be performed, the vendor and all subcontractors have implemented or are in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the state of Minnesota."

E-Verify is a federal system established by the Department of Homeland Security to determine the immigration and work-eligibility status of prospective employees.

Detailed E-Verify program information for employers can be found at https://www.e-verify.gov.

By signing relevant solicitation responses and contracts, a vendor is certifying compliance with the statutory requirement with respect to its own business.

Additionally, prior to the initiation of services, a vendor must obtain written certification from all subcontractors who will participate in the performance of the contract. The certification below has been prepared for prime contractors to use for this purpose. All subcontractor certifications must be kept on file with the contract vendor and made available to the state upon request.

**CERTIFICATION (In accordance with Minn. Stat. §16C.075)**

By the date of the performance of services, the company shown below will have implemented or will be in the process of implementing the E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

**I certify that the company shown below is in compliance with the above statement and that I am authorized to sign on its behalf.**

Name of Company: _____

Authorized signature: _____

Printed name: _____

Title: _____

Date: _____

Telephone Number: _____

E-mail address: _____

The state reserves the right to determine how it will respond to any instances of non-compliance or false certification of compliance. Potential state actions include, but are not limited to cancellation of the contract and/or suspending or debarring the contract vendor from state purchasing.