

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

Project Information	
<b>State Project Number:</b>	<b>This contract uses the following project delivery method:</b> <input type="checkbox"/> Highway Construction <input type="checkbox"/> Professional-Technical (PT) services contract
<b>This contract will be solicited and administered by:</b> The Minnesota Department of Transportation (MnDOT)	

### Introduction

**State regulations govern.** The Targeted Group Business (TGB) and Veteran-owned Small Business (VET) programs are authorized by Minn. Stat. §161.321. State law authorizes MnDOT to award a preference to certified Targeted Group and Veteran-owned small businesses. State law also authorizes MnDOT to set a goal for the use of certified Targeted Group and Veteran-owned small businesses.

**Purpose.** The MnDOT TGB and VET Small Business programs are part of the MnDOT initiative to increase small business participation on state-funded projects. These programs are intended to provide eligible businesses with increased access to state contracting opportunities. TGB and VET small business responders may receive a preference, and contracts may include subcontracting goals to increase participation of TGB and VET small businesses.

**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. Additional information about CRL can be found in **Attachment 5**.

**TGB/VET Small Business Directory.** To participate in the MnDOT TGB or VET small business program, a business must be certified at the time of contract execution.

A directory of certified TGB and VET small businesses in the state of Minnesota is available at the following link:

<http://www.mmd.admin.state.mn.us/process/search/>

VET small businesses may also be found in the Vendor Information Pages database at:

[www.vip.vetbiz.gov](http://www.vip.vetbiz.gov)

A VET small business may provide a copy of the VA-issued notice of verification showing that the business is approved as a VET small business within the 24 month period prior to the date of contract execution. Further information regarding TGB and VET business eligibility may be found in **Attachment 1**.

## **Before Contract Award**

### *TGB and VET Small Business Goals*

MnDOT has established the following goals for subcontractors and suppliers on this project:

**VET goal \_\_\_\_\_%    TGB goal \_\_\_\_\_%**

**Commitment Rate.** Each responder must identify the percentage of TGB and VET participation it commits to utilize on the project at the time proposals are due. This is the commitment rate. The commitment rate may be used to evaluate good faith efforts in the comparison to the performance of other responders in meeting the TGB and VET goals.

### *Preference in Proposal*

A TGB or VET small business will receive a preference of up to 6% of the amount of its bid, not to exceed \$60,000. The preference will be applied only for the purpose of evaluating proposals, and will not be used to determine the contract award amount or payment due to the contractor under the contract. **A responder requesting the preference must submit the Preference Form with the proposal documents.**

### *TGB and VET small business credit toward goals*

The goal may be attained by:

- **Self-performance.** If the responder is an eligible TGB or VET, the responder may count all work being self-performed towards the subcontractor goals for this contract.
- **Subcontracting.** Subcontracting with TGB and VET small businesses deemed eligible by the Minnesota Department of Administration under Minn. Stat. §16C.16 or Minn. Rule Parts 1230.1600-1820 The responder must submit a signed exhibit A to prove the existence of such a subcontract,;
- **Leasing Equipment.** Leasing equipment from eligible TGB and VET firms;
- **Joint Venture.** Entering into a joint venture with eligible TGB and VET firms. The MnDOT Office of Civil Rights must approve the joint venture in writing prior to proposal due date;
- **Suppliers.** Purchasing materials and supplies from eligible TGB and VET firms. Generally, sixty percent (60%) of the supplier's contracted amount will be credited toward the TGB and VET goals, see **Attachment 2** for exceptions;
- **Other services.** Using other services as approved in writing by the MnDOT Office of Civil Rights prior to proposal due date.

The responder gets TGB/VET small business credit only for work actually performed by a TGB or VET firm. Also, the responder gets TGB/VET small business credit only if the TGB/VET firm performs a commercially useful function. **Attachment 2** describes the standards MnDOT will use to count TGB/VET small business credit and to determine whether a TGB or VET small business performs a commercially useful function.

**RESPONDER SUBMITTAL OF INFORMATION**

The responder must either: (1) identify TGB and VET participation sufficient to meet both the TGB and VET goals; or (2) demonstrate that the responder made adequate good faith efforts (GFE) to meet the TGB and VET goals. The responder must submit the following documents to the MnDOT Office of Civil Rights:

<b>Table A –What to Submit to MnDOT</b>	
<b>If <u>both</u> of the goals are met:</b>	<b>If one or both of the goals are NOT met:</b>
<p><b>The responder must submit:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Bidders List</li> <li><input type="checkbox"/> Exhibit A for each TGB or VET subcontractor participating on project</li> </ul>	<p><b>The responder must submit:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Bidders List</li> <li><input type="checkbox"/> Exhibit A for each TGB or VET subcontractor participating on project</li> <li><input type="checkbox"/> Signed and notarized Good Faith Efforts Affidavit</li> <li><input type="checkbox"/> Certificate of Good Faith Efforts</li> <li><input type="checkbox"/> Any other documentation demonstrating good faith efforts</li> </ul>

**Meet the Goal.** If the responder meets the goals, it must complete and submit only the following forms by the submission due date:

- 1) Bidders List; and
- 2) Exhibit A Form for each TGB and VET the responder intends to use.

**Make a Good Faith Effort.** If the responder does not meet the TGB goal, VET goal, or both, it must demonstrate its efforts to obtain certified TGB or VET subcontractors pursuant to Minn. Stat. §161.321 subd. 2a. MnDOT will consider good faith efforts on a case-by-case basis. Failure to submit documentation by the submission due date will result in the responder being deemed non-responsible.

If the responder does not meet the TGB or VET small business goals, MnDOT will conduct a GFE review to determine whether the responder made adequate GFE to meet the goals based on the documentation the responder has provided. The standards MnDOT will use to evaluate GFE are described in **Attachment 3**. If MnDOT determines that the responder did not make adequate GFE to meet the goals, the proposal will be deemed non-responsible. The responder may request an administrative reconsideration of that determination. The process for administrative reconsideration is described in **Attachment 4**.

In order to demonstrate good faith efforts, the responder must, at a minimum, complete and submit:

- 1) Bidders List and an Exhibit A form for each TGB and VET the responder intends to use;
- 2) Complete and submit a Certificate of Good Faith Efforts;
- 3) Complete and submit a Good Faith Efforts Affidavit;
- 4) Provide an explanation of any TGB and VET quotes rejected; and
- 5) Provide any additional information to demonstrate its good faith efforts. This information can include, but is not limited to, copies of solicitation letters, faxes, and emails to TGB and VET firms. The responder must identify the actions it took to achieve the TGB and VET goals.

**If the responder meets one goal but not the other**, the responder must submit the required documentation under “Meet the Goal” for the goal that was met, and the required documentation under “Make a Good Faith Effort” must be submitted for the goal that was not met.

<b>Table B – When and How to Submit Information to MnDOT</b>	
<input type="checkbox"/> <b>Construction Contract</b>	<input type="checkbox"/> <b>Professional/Technical Contract</b>
<p><b><u>Date and Time</u></b> Documentation is due before 4:30 PM Central Time on the submission due date. <b>The submission due date is the fifth (5<sup>th</sup>) calendar day after the bids are due</b>, unless responder requests and receives a written extension from the Director of MnDOT Office of Civil Rights. If the fifth calendar day is a federal holiday, or Minnesota state holiday, the documentation is due on the next day that is not a Saturday, Sunday, federal holiday, or Minnesota state holiday. The five day period starts the calendar day following the date bids are due.</p> <p><b><u>Format and Location</u></b> <b>The Bidders List must be entered into CRL.</b></p> <p>The responder can submit all other documents via email, fax, hand delivery, or U.S. mail. Submit to the MnDOT Office of Civil Rights as follows.</p> <p>To email your submission, submit to <b>ocrformsubmissions.dot@state.mn.us</b></p> <p>To fax your submission, use <b>651-366-3129</b>.</p> <p>To hand-deliver your submission, deliver printed documents to the information desk on the first floor of MnDOT’s central office at <b>395 John Ireland Boulevard, St. Paul, MN 55155</b> and mark them for the attention of the Office of Civil Rights.</p> <p>To submit by U.S. mail, address printed documents to <b>MnDOT Office of Civil Rights, 395 John Ireland Boulevard, Mail Stop 170, St. Paul, MN 55155</b>. Submissions by U.S. mail will satisfy the timing requirement if <u>postmarked</u> by the time specified in the “Date and Time” section above.</p>	<p><b><u>Date and Time</u></b> Documentation is due before 4:30 PM Central Time on the submission due date. <b>The submission due date is the fifth (5<sup>th</sup>) calendar day after the responder is notified of its selection</b>, unless responder requests and receives a written extension from the Director of MnDOT Office of Civil Rights. If the fifth calendar day is a federal holiday, or Minnesota state holiday, the documentation is due on the next day that is not a Saturday, Sunday, federal holiday, or Minnesota state holiday. The five day period starts the calendar day following receipt of notification of being the apparent successful responder.</p> <p><b><u>Format and Location</u></b> The responder can submit documents via email, fax, hand delivery, or U.S. mail. Submit to the MnDOT Office of Civil Rights as follows.</p> <p>To email your submission, submit to <b>ocrformsubmissions.dot@state.mn.us</b></p> <p>To fax your submission, use <b>651-366-3129</b>.</p> <p>To hand-deliver your submission, deliver printed documents to the information desk on the first floor of MnDOT’s central office at <b>395 John Ireland Boulevard, St. Paul, MN 55155</b> and mark them for the attention of the Office of Civil Rights.</p> <p>To submit by U.S. mail, address printed documents to <b>MnDOT Office of Civil Rights, 395 John Ireland Boulevard, Mail Stop 170, St. Paul, MN 55155</b>. Submissions by U.S. mail will satisfy the timing requirement if <u>postmarked</u> by the time specified in the “Date and Time” section above.</p>

**FAILURE TO SUBMIT ALL REQUIRED INFORMATION BY THE SUBMISSION DUE DATE WILL DEEM THE RESPONDER NON-RESPONSIBLE. PARTIAL SUBMISSIONS WILL NOT BE CONSIDERED.**

## **After Contract Award**

### **Failure to Fulfill TGB and VET firm commitments after award**

A contractor that fails to fulfill the TGB and VET commitments after award is subject to appropriate administrative sanctions if the following factors exist:

- a. the contractor fails to either (1) meet, or (2) make adequate good faith efforts to meet, the TGB and VET commitment it represented in its proposal or GFE submission;
- b. the failure is through no fault of either the TGB or VET firm; and
- c. the failure is not the result of a modification made by MnDOT or the project owner that reduces the scope of work that either the TGB or VET is to perform.

Sanctions may include, but are not limited to, MnDOT withholding progress payments and taking monetary deductions from contract payments, up to six percent of the total project value. MnDOT will determine sanctions on a case-by-case basis.

### **TGB and VET firm Replacement**

The contractor must request written consent from OCR prior to terminating a TGB or VET firm it has already committed to utilizing on the project. The contractor must not terminate a TGB or VET firm unless MnDOT OCR has approved the request to terminate.

MnDOT may approve an adjustment to the contractor's TGB or VET commitment if a TGB or VET participant that was part of the original commitment fails to perform and cannot be replaced with a firm eligible to meet the goal requirement despite the contractor's adequate good faith efforts.

Before transmitting to OCR its request to terminate and/or substitute a TGB or VET subcontractor, the prime contractor must give notice in writing to the TGB or VET subcontractor, with a copy to MnDOT, of its intent to request to terminate and/or substitute, and the reason for the request.

### **Payment**

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 report payment information as specified in **Table C**.

<b>Table C – Required Payment Information</b>	
<input type="checkbox"/> <b>Construction Contract</b>	<input type="checkbox"/> <b>PT contract</b>
<p>Within 10 business days of your receipt of MnDOT payment:</p> <ul style="list-style-type: none"> <li>The responder must enter payments into CRL after each payment to a subcontractor, supplier, and trucking firm.</li> </ul> <p>When all payments have been made to TGB and VET subcontractors:</p> <ul style="list-style-type: none"> <li>The responder must submit a Total Payment Affidavit to MnDOT.</li> <li>The responder must enter all final payment information into CRL.</li> </ul> <p>To fax your submission, use <b>651-366-3129</b>.</p> <p>To email your submission, attach documents as PDFs and send to <b>ocrformsubmissions.dot@state.mn.us</b>.</p> <p>To submit by U.S. mail, address printed documents to <b>MnDOT Office of Civil Rights, 395 John Ireland Boulevard, Mail Stop 170, St. Paul, MN 55155</b>.</p>	<p>Within 10 business days of your receipt of MnDOT payment:</p> <ul style="list-style-type: none"> <li>The responder must submit a Contractor Payment Form to MnDOT after each payment to a subcontractor.</li> </ul> <p>When all payments have been made to TGB and VET subcontractors:</p> <ul style="list-style-type: none"> <li>The responder must submit a Total Payment Affidavit to MnDOT after final payment to all subcontractors.</li> </ul> <p>To fax your submission, use <b>651-366-3129</b>.</p> <p>To email your submission, attach documents as PDFs and send to <b>ocrformsubmissions.dot@state.mn.us</b>.</p> <p>To submit by U.S. mail, address printed documents to <b>MnDOT Office of Civil Rights, 395 John Ireland Boulevard, Mail Stop 170, St. Paul, MN 55155</b>.</p>

## Appendices

### *Explanatory Attachments*

- Attachment 1 – Eligibility
- Attachment 2 – Counting Credit and Commercially Useful Function
- Attachment 3 – Good Faith Efforts
- Attachment 4 – Administrative Reconsideration
- Attachment 5 – Information about AASHTOWare Project CRL

### *Forms*

- Exhibit A – TGB/VET Description of Work and Field Monitoring Report
- Exhibit B – TGB/VET’s Preference Form
- Exhibit C – Certificate of Good Faith Efforts
- Exhibit D – Bidders List
- Exhibit E – Good Faith Efforts Affidavit
- Exhibit E – Contractor Payment Form
- Exhibit F – Total Payment Affidavit

## Attachment 1 – Eligibility

### Eligibility for Targeted Group Business

**Eligibility.** The Targeted Group Business program requirements are defined in Minn. Stat. § 16C.19 (a). To be certified as a Targeted Group small business, the business must be at least 51% owned by a woman, racial minority, or person with a substantial physical disability. In addition, the business must be operated and controlled on a day-to-day as well as long-term basis by the qualifying owner.

**Rules.** Rules regarding eligibility and the designation of targeted group businesses can be found at Minn. Rule Parts 1230.1600-1820 or on the Department of Administration’s website at: <http://www.mmd.admin.state.mn.us/mn02001.htm> .

**Directory.** To participate in the MnDOT TGB program, a business must be certified at the time of contract execution. Certified Targeted Group Businesses are listed in the [Directory of Certified Targeted Group, Economically Disadvantaged and VET Vendors](#). MnDOT makes no representation as to any TGB’s technical or financial ability to perform the work. Prime contractors are solely responsible for performing due diligence in hiring TGB firms. A TGB’s failure to perform the work will not be considered justification for a compensation increase or time extension.

### Eligibility for VET Small Businesses

**Eligibility.** The VET small business program requirements are defined in Minn. Stat. §16C.19 (d). To be certified as a VET small business, the business must be at least 51% owned by a veteran or service-disabled veteran as determined by the Minnesota Department of Veterans Affairs or the United States Department of Veteran Affairs. In addition, the business must be operated and controlled on a day-to-day as well as long-term basis by the qualifying owner.

**Rules.** Rules regarding eligibility and the designation of veteran-owned small businesses can be found at Minn. Rule Parts 1230.1600-1820 or on the Department of Administration’s website at: <http://www.mmd.admin.state.mn.us/mn02001.htm> .

**Directory.** To participate in the MnDOT VET small business program, a business must be certified at the time of contract execution. Certified VET small businesses are listed in the [Directory of Certified Targeted Group, Economically Disadvantaged and VET Vendors](#), the Vendor Information Pages database at [www.vip.vetbiz.gov](http://www.vip.vetbiz.gov); or it may provide a copy of the VA-issued notice of verification showing that the business is approved as a VET small business within the 24 month period prior to the date of contract execution. MnDOT makes no representation as to any VET’s technical or financial ability to perform the work. Prime contractors are solely responsible for performing due diligence in hiring VET firms. A VET firm’s failure to perform the work will not be considered justification for a compensation increase or time extension.



## **Attachment 2 – Counting TGB and VET participation; Commercially Useful Function**

**Counting.** On a case-by-case basis and in accordance with Minn. Rule Part 1230.1820, MnDOT will determine the percentage of TGB and VET participation that will count toward TGB and VET goals as follows:

Credit toward the goal established for the contract will be at 100 percent for subcontractors who provide labor, materials, and supplies and at 60 percent for subcontractors who provide supplies and materials only.

When a TGB or VET participates in a contract, MnDOT will only count the value of the work actually performed by the TGB or VET firm toward TGB or VET goals. This includes the following:

- a. The entire amount of the portion of this MnDOT contract that is performed by the TGB or VET's own forces. Include the cost of supplies and materials obtained by the TGB or VET for the work of the contract, including supplies purchased or equipment leased by the TGB or VET (except supplies, and equipment the TGB or VET purchases or leases from the prime contractor or its affiliate).
- b. The entire amount of fees or commissions charged by a TGB or VET 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 MnDOT contract, counts toward TGB or VET goals, provided that MnDOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- c. When a TGB or VET subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward TGB or VET goals only if the subcontractor is itself a TGB or VET. Work that a TGB or VET subcontracts to a non-TGB or non-VET firm will not count toward TGB or VET goals.

**Joint Venture.** When a TGB or VET performs as a participant in a joint venture, MnDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the TGB or VET performs with its own forces toward TGB or VET goals.

**Commercially Useful Function.** MnDOT will count expenditures of a TGB or VET contractor toward TGB or VET-goals only if the TGB or VET is performing a commercially useful function on that contract.

1. A TGB or VET performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the TGB or VET must also be responsible, with respect to materials and

supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the material itself. To determine whether a TGB or VET 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 TGB or VET credit claimed for its performance of the work, and other relevant factors.

2. A TGB or VET does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of TGB or VET participation. In determining whether a TGB or VET is such an extra participant, MnDOT may examine similar transactions, particularly those in which TGB or VET firms do not participate.
3. At least 75 percent of the subcontracts awarded to a TGB or VET must be performed by the business to which the subcontract is awarded or another TGB or VET respectively. If a TGB or VET does not perform or exercise responsibility for at least 75 percent of the total cost of its contract with its own work force, or the TGB or VET subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, MnDOT may presume that it is not performing a commercially useful function.
4. When a TGB or VET is presumed not to be performing a commercially useful function as provided in the preceding paragraph, the TGB or VET 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 will use the following factors in determining whether a TGB or VET trucking company is performing a commercially useful function:
  - a. The TGB or VET 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 TGB or VET goals.
  - b. The TGB or VET must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - c. The TGB or VET receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates using drivers it employs.
  - d. The TGB or VET may lease trucks from another TGB or VET firm, including an owner-operator that is an eligible TGB or VET. The TGB or VET who leases trucks from another TGB or VET receives credit for the total value of the transportation services the lessee TGB or VET provides on the contract.

- e. The TGB or VET may also lease trucks from a non-TGB or non-VET firm, including an owner-operator. The TGB or VET who leases trucks from a non-TGB or VET is entitled to credit for the total value of transportation services provided by non-TGB or non-VET lessees not to exceed the value of transportation services provided by TGB or VET trucks on the contract. Additional participation by non-TGB or non-VET lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.
  - f. For purposes of this section, a lease must indicate that the TGB or VET 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 TGB or VET, so long as the lease gives the TGB or VET absolute priority for the use of the leased truck. Leased trucks must display the name and identification number of the TGB or VET.
6. MnDOT will count expenditures with TGB or VET(s) for materials or supplies toward TGB or VET goals as provided in the following:
- a. MnDOT will count 100% of the cost of the materials or supplies toward TGB or VET goals if the materials or supplies are obtained from a TGB or VET manufacturer.
  - b. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described in the specifications.
  - c. If the materials or supplies are purchased from a TGB or VET regular dealer, MnDOT will count 60% of the cost of the materials or supplies toward TGB or VET goals.
  - d. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold to or leased to the public in the usual course of business.
    - i. 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.
    - ii. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular

dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

- iii. If a TGB or VET firm is supplying or hauling bulk materials such as petroleum products, steel, cement, gravel, stone or asphalt that are not stored or hauled on the project site, the firm will receive 60% credit only for the total cost of materials under the contract specifications.
  - iv. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.
7. With respect to materials or supplies purchased from a TGB or VET which is neither a manufacturer nor a regular dealer, MnDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward TGB or VET goals, provided MnDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. MnDOT, however, will not count any portion of the cost of the materials or supplies themselves toward TGB or VET goals.
  8. MnDOT will not count the participation of a TGB or VET toward the contractor's final compliance with its TGB or VET subcontractor obligations on a contract until the amount being counted has been actually paid to the TGB or VET(s).

### **Attachment 3 – Good Faith Efforts**

MnDOT Office of Civil Rights will review each responder's GFE documents and the TGB and VET commitment to determine the responder's commitment rate.

MnDOT Office of Civil Rights will review the good faith effort documents and determine whether a responder that did not meet the goal made adequate good faith efforts to meet the goal. The responder must demonstrate that it took all necessary and reasonable steps to achieve the TGB and VET goals. Necessary and reasonable steps are those efforts that, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient participation, even if the efforts were not fully successful.

MnDOT will consider the quality, quantity, and intensity of the efforts that the responder has made. The efforts by the responder should be efforts that one could reasonably expect a responder to take if the responder were actively and aggressively trying to obtain TGB and VET participation sufficient to meet the contract goals. MnDOT will not consider mere *pro forma* efforts to be made in good faith.

In evaluating the responder's adequate good faith efforts, MnDOT will consider the following list of actions. This is not an all-inclusive list, and other factors or types of efforts may be relevant. The Department will decide on a case-by-case basis if the responder made adequate good faith efforts.

**Solicitation** – Soliciting through all reasonable and available the interest of eligible TGBs and VETs that have the capability to perform the work of the contract. This includes, for example, following up with firms in attendance at pre-proposal meetings, advertising opportunities to subcontract, or providing written notices to firms identified through the TGB/VET directories. The responder must solicit interest within sufficient time to allow the TGBs and VETs to respond to the solicitation. The responder must determine with certainty if the TGBs and VETs are interested by taking appropriate steps to follow-up from initial solicitations.

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

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

**Negotiation** – Negotiating in good faith with interested TGBs and VETs. Evidence of negotiation includes the names, addresses, and telephone numbers of TGBs and VETs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for TGB and VETs to perform the work. A responder using good business judgment would consider a

number of factors in negotiating with subcontractors, including TGB and VET subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using TGBs and Veteran businesses is not in itself sufficient reason for the responder's failure to meet the contract TGB or VET 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 responder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from TGBs and VETs if the price difference is excessive or unreasonable.

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

**Financial Assistance** – Making efforts to assist interested TGBs and VETs in obtaining lines of credit, or insurance as required by MnDOT or responder.

**Equipment Assistance** – Making efforts to assist interested TGBs and VETs in obtaining necessary equipment, supplies, materials, or related assistance or services.

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

**Any other evidence** the responder submits which shows that the responder has made reasonable good faith efforts to meet the TGB or VET goals.

In addition, MnDOT may also take into account the following:

- a. Whether the responder's documentation reflects a clear and realistic plan for achieving the TGB or VET goals.
- b. The performance of other responders in meeting the TGB and VET goals. For example, when the responder fails to meet the goals, but others meet it, the Department may reasonably infer that, with additional reasonable efforts, the responder could have met the goals. If the responder fails to meet the TGB or VET goals, but meets or exceeds the average TGB or VET participation obtained by other responders, MnDOT may view this in conjunction with other factors, as evidence of the responder having made a good faith effort.

## **Attachment 4 – Administrative Reconsideration**

If OCR determines that the proposal is non-responsible because the responder failed to make adequate good faith efforts, the responder may request administrative reconsideration. The responder will be deemed to have waived its right to request administrative reconsideration if it does not make a written request within 5 business days.

The responder must make a written request for administrative reconsideration. The responder must deliver this request so that it is received by MnDOT no later than 4:30 PM on the fifth business day after the responder receives written notice of the Office of Civil Rights' determination. If the request is sent by mail, the responder should use certified mail to ensure that MnDOT received the request. The responder must submit the written request for reconsideration to the attention of:

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

A copy of the request must be sent to:

**Director of the Office of Civil Rights, 395 John Ireland Blvd., MS 170, St. Paul, Minnesota 55155, or by fax 651-366-3129.**

The reconsideration process is a review of only the good faith efforts made by the responder as of the submission due date. Good faith efforts made subsequent to that date will not be considered.

MnDOT will provide the responder with a written decision on reconsideration, explaining the basis for the determination **no later than 5 business days following the date of the meeting with Reconsideration Officials.**

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

### **General Information**

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

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 State 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/>



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

Check One:  TGB  Veteran-owned Small Business (VET)

### MUST BE COMPLETED BY THE TGB/VET FIRM PRINCIPAL

This contract will not be awarded to the Prime Contractor unless this form is submitted with a signed subcontract, purchase order, or affidavit for each TGB or Veteran-owned firm (VET) participating in the contract. This form is complete when the TGB or VET subcontractor has filled in **all of the applicable information in sections A through D and signed in section E.**

PLEASE PRINT CLEARLY OR TYPE

**Section (A):** (ALL TGB/VET subcontractors, including trucking firms and suppliers must complete this section.)

Letting Date: \_\_\_\_\_ State Project Number: \_\_\_\_\_  
 Prime Contractor: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 TGB/VET Subcontractor: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 TGB/VET Principal Name: \_\_\_\_\_ Total Subcontract \$: \_\_\_\_\_  
 TGB or VET Participation Claimed: \_\_\_\_\_ Percent \_\_\_\_\_% Amount \_\_\_\_\_

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

1. Did you bid and sign a subcontract agreement with the above-named prime contractor? \_\_\_\_\_
2. List the scope(s) of work to be performed and the associated North American Industry Classification System (NAICS) codes for each scope: (attach separate sheet if additional room is needed)

Scope of Work	Associated NAICS Code

3. If the equipment to be used is not owned by your firm, please provide the following information:
  - a. Will you be renting or leasing include any of the following: (Attach a copy of the lease or rental agreement(s).  
 Equipment \_\_\_\_\_ Insurance \_\_\_\_\_ Operator \_\_\_\_\_ or Maintenance \_\_\_\_\_
  - b. Lessor's name: \_\_\_\_\_  
 Amount to be paid: \_\_\_\_\_ Number of days to be used: \_\_\_\_\_
4. Will there be any other firm(s) providing work listed in your subcontract for this project? YES \_\_\_ NO \_\_\_  
 If yes, answer the following: Firm's Name: \_\_\_\_\_ \$ amount of the work: \_\_\_\_\_
5. What is the name of the person supervising your work on this project? \_\_\_\_\_  
 Is this your employee? \_\_\_\_\_
6. Is your firm purchasing materials (including Bulk Materials such as A/C Oil, Cement, Gravel, etc.) to be supplied or installed on the project? YES \_\_\_ NO \_\_\_  
 If YES, complete **Section (C)** below

**Section (C)** To be completed by all TGB/VET firms purchasing or supplying materials on the project.

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

**NOTE: This Exhibit A will not be approved without the Purchase Agreement, Materials Invoice, or Purchase Order.**

1. What material(s) are you supplying? \_\_\_\_\_
2. Total dollar amount of materials to be supplied? \_\_\_\_\_
3. Who are you purchasing the materials from? \_\_\_\_\_
4. What is the quantity of material to be purchased? \_\_\_\_\_
5. Where are the materials being delivered? (ie. project site or plant) \_\_\_\_\_

6. Is the delivery equipment owned and operated by your firm? YES \_\_\_\_\_ NO \_\_\_\_\_

If not, who owns and operates the equipment? \_\_\_\_\_

**Section (D) TO BE COMPLETED ONLY BY TGB/VET TRUCKING FIRMS AND MATERIAL HAULERS**

1. The number of hours contracted or quantities to be hauled on this project?  
\_\_\_\_\_

2. How many fully operational units will be used on this Project? \_\_\_\_\_ (Tractor/trailers: \_\_\_\_\_ Dump trucks: \_\_\_\_\_)

3. How many fully operational units will be yours? \_\_\_\_\_ (Tractor/trailers: \_\_\_\_\_ Dump trucks: \_\_\_\_\_)

4. How many other units will be yours? \_\_\_\_\_ (Tractors: \_\_\_\_\_ Trailers: \_\_\_\_\_)

5. How many ITOs will be used on this project? \_\_\_\_\_ (Tractor: \_\_\_\_\_ Trailers: \_\_\_\_\_ Dump trucks: \_\_\_\_\_)

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

**Section (E):** (All TGB/VET subcontractors, including trucking firms and suppliers, 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.

Certified Business: \_\_\_\_\_ Firm Principal: \_\_\_\_\_

\_\_\_\_\_  
Signature Title Date

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

Revised by OCR: \_\_\_\_\_

OCR Main Phone No: 651-366-3073

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

**Section (G): TO BE COMPLETED BY PROJECT ENGINEER WHEN THE TGB/VET'S PORTION OF WORK IS 1/3 TO 1/2 COMPLETED**

1. Does it appear that the TGB/VET firm is performing the work specified in (Exhibit "A") description of work?  
Yes \_\_\_\_\_ No \_\_\_\_\_

2. Does it appear that the TGB/VET contractor is managing their portion of the project and using their own company employees?  
Yes \_\_\_\_\_ No \_\_\_\_\_

3. Does it appear that the TGB/VET firm is providing the equipment for their items of work or other work specified?  
Yes \_\_\_\_\_ No \_\_\_\_\_

4. Does it appear that the TGB/VET's performance, scheduling and project management are meeting industry standards?  
Yes \_\_\_\_\_ No \_\_\_\_\_

5. If the TGB/VET firm 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: \_\_\_\_\_

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

Name of Contractor/Consultant	State Project #	Date of Letting
Address	City	State/Zip
Contact Person/ EEO Officer	Phone Number	E-Mail Address

**TGB**

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

**-OR-**

**VET**

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

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

OR

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

- A copy of the verification as a VET small business issued by the United States Department of Veterans Affairs (VA). The business must be VA verified at the time proposals are due.
- Discharge form (DD-214) with condition honorable.

OR

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

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

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

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

Signed \_\_\_\_\_  
Responder or authorized representative



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

**CERTIFICATE OF GOOD FAITH EFFORTS**

State Project Number: \_\_\_\_\_ Letting Date \_\_\_\_\_ **TGB** **VET**  
 Prime Contractor \_\_\_\_\_ Commitment \_\_\_\_\_ Commitment \_\_\_\_\_  
 Proposed Cost \_\_\_\_\_ Goal \_\_\_\_\_ Goal \_\_\_\_\_

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

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

(Make additional copies of this form as necessary)

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

\_\_\_\_\_  
 Responder or Authorized Representative

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



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

**BIDDERS LIST**

Construction Projects-Enter this information into CRL

State Project No.: \_\_\_\_\_ Letting Date \_\_\_\_\_ **TGB** **VET Business**  
 Prime Contractor \_\_\_\_\_ Commitment \_\_\_\_\_ Commitment \_\_\_\_\_  
 Proposed Cost \_\_\_\_\_ Goal \_\_\_\_\_ Goal \_\_\_\_\_

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

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

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

(Make additional copies of this form as necessary)



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

**GOOD FAITH EFFORTS AFFIDAVIT**

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

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

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

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

Subscribed and sworn to before me

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

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

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



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

**Contractor Payment Form**

State Project Number: \_\_\_\_\_ Prime \_\_\_\_\_ Subcontractor \_\_\_\_\_

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

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

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

(This form may be submitted in an alternate format)

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

\_\_\_\_\_  
Responder or Authorized Representative

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



## TGB/VET Total Payment Affidavit

Pursuant to MnDOT Standard Specifications for Construction, Section 1516.3, the following TGB/VET Total Payment Affidavit shall be executed by the Prime Contractor after all work contracted to be performed by TGBs/VETs has been satisfactorily completed. This Affidavit is required prior to MnDOT Office of Civil Rights issuing final clearance on the project. Identify each TGB/VET firm that worked on the project and the dollar amount of the subcontract. If the dollar value of a TGB/VET firm's total work is less than the TGB's/VET's original subcontract, please attach an explanation.

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

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

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

1. I am the authorized representative of \_\_\_\_\_  
(Name of Individual, Company, Partnership or Corporation)

and I have the authority to make this affidavit for and on behalf of said Prime Contractor.

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

	Name of TGB/VET Firm	Dollar Amount of Subcontract	Total Dollar Amount Paid
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

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

Signed: \_\_\_\_\_  
(Prime Contractor or Authorized Representative)

Subscribed and sworn to before me  
 This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Notary Public)  
 My commission expires \_\_\_\_\_, 20\_\_\_\_

Prepare affidavit in duplicate. Submit one affidavit to the Project Engineer, and one to:  
**MnDOT's Office of Civil Rights, 395 John Ireland Blvd., MS 170, St. Paul, MN 55155**  
**or email completed form to: [ocrformsubmissions.dot@state.mn.us](mailto:ocrformsubmissions.dot@state.mn.us)**

**No. 1516.3 – Standard Specifications for Construction**  
 Unless the Contractor has presented an Affidavit showing the total dollar amounts of work performed by Targeted Group Businesses and Veteran-Owned Small Businesses, a final clearance letter will not be issued.