

MINNESOTA
DEPARTMENT OF TRANSPORTATION
DISTRICT 4

REQUEST FOR PROPOSALS

TH 10/75 – 11th Street Underpass in Moorhead, MN
Construction Manager General Contractor (CMGC)

PROJECT

S.P. 1401-177

March 23, 2021

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1 INTRODUCTION

1.1 GENERAL INFORMATION

This Request for Proposals (RFP) is issued by the Minnesota Department of Transportation (MnDOT) to all firms and teams of firms (“Proposer”) interested in a Construction Manager/General Contractor (CMGC) professional/technical services contract for the TH 10/75 – 11th Street Underpass project (the “Project”) located in Clay County, Minnesota. MnDOT hereby invites such Proposers to submit competitive proposals (“Proposals”) for CMGC services for the Project as more specifically described in this RFP.

The Project is anticipated to be funded with Federal, State and Local dollars thereby requiring that the Proposers adhere to all pertinent laws, rules, and regulations.

This RFP uses the term “CMGC Contractor” when indicating the construction firm that will provide pre-construction services as Construction Manager. The CMGC Contractor may be awarded a construction contract to become the General Contractor. For more information on CMGC contracting and the scope of work required for this project, refer to Exhibit 1 and Exhibit 2 of this RFP.

1.2 PROJECT TEAM & RESPONSIBILITIES

The Project Team, as referenced herein, is composed of MnDOT, MnDOT’s Design Consultants, and the CMGC Contractor. MnDOT has or will retain an independent cost estimator (ICE) and engineer’s estimator (EE) through a separate procurement process, with whom the CMGC Contractor will coordinate throughout the design phase of the Project.

1.2.1 MnDOT

The project will be administered and managed by MnDOT. All other consultants and contractors working on the project report directly to MnDOT. The MnDOT Project Manager will be the point of contact and primary MnDOT position. The Project Manager will guide design decisions while overseeing the collaborative process among the Project Team. Other key MnDOT project stakeholders include the Bridge Office, which is responsible for overseeing the bridge design and managing MnDOT’s Bridge Design Consultant, and MnDOT’s Office of Materials and Road Research, which is responsible for overseeing the geotechnical design.

1.2.2 Design Consultants

MnDOT has an existing contract with KLJ Engineering, LLC for the Project’s preliminary design. MnDOT intends to procure other design services including final roadway and bridge design. It is anticipated that one contract will be issued for final roadway and bridge design services. As part of the CMGC process, the CMGC Contractor is expected to work collaboratively with MnDOT and MnDOT’s Design Consultants to optimize the design and explore design options. The intent is to streamline the project delivery, and reduce risk and cost, by incorporating the CMGC Contractor’s input into the design process. This may include accepting some or all the CMGC Contractor’s key temporary work plans prior to the CMGC Contractor submitting a price proposal/bid for the construction of the project.

1.2.3 MnDOT General Engineering Consultant (GEC)

MnDOT may be using the services of its GEC, WSB and Associates, Inc., to provide guidance, assist with project administration and technical matters, and cost estimating services under the direction of MnDOT's Estimating Engineer.

1.2.4 Independent Cost Estimator (ICE) and Engineer's Estimator (EE)

MnDOT will retain an Independent Cost Estimator (ICE) and Engineer's Estimator (EE) who will provide comparative price estimates both during and at the end of design. The ICE and EE will use existing market conditions for the cost estimates. The price proposal by the CMGC Contractor at the end of design will go through a price proposal opening process where the ICE and EE will be used to evaluate the CMGC Contractor's price proposal and make an award decision. The more complete description of the process that MnDOT will use to evaluate the CMGC Contractor's price proposal is available from MnDOT's website listed below. <http://www.dot.state.mn.us/const/tools/const-manager-general-contractor.html>

1.2.5 Co-Location

Co-location is not anticipated for this project; however, the CMGC Contractor's Key Personnel will be expected to attend multi-day (2-3 days) workshops with the project team. These workshops are expected to take place at MnDOT's District 4 Building in Detroit Lakes at key design milestones (30%, 60%, and 90% designs). Other meetings will be required and can be facilitated by using teleconferences and/or Skype.

1.3 PROJECT DESCRIPTION

The Minnesota Department of Transportation (MnDOT) is programming construction of the T.H. 10/75 – 11th Street Underpass Project in Moorhead, Minnesota as State Project No. 1401-177. The project includes two grade separations of T.H. 10/75 under the Burlington Northern and Santa Fe (BNSF) KO (double track) and Prosper (single track) rail lines. Construction of railroad shooflies is anticipated to allow the new rail bridges to be constructed on the existing rail alignment while rail traffic is diverted around the new bridge construction. Additional work is anticipated to include retaining walls, storm sewer pump station/pond and outfall, sanitary sewer and water utility relocations, pedestrian accessibility (ADA) improvements, paving, and new signal systems at the intersections with Main Street, Center Street, and 1st Street.

The project was bond funded by the Minnesota State Legislature in 2020. Other funds to make up the project costs come from MnDOT (state and federal funds), the City of Moorhead, Clay County and BNSF Railroad. The project has been developed through the layout and environmental document phase by the City of Moorhead, with support from MnDOT. MnDOT will take the lead in managing the project's final design and construction phases, including managing the CM/GC Contractor.

Under existing conditions in downtown Moorhead, including along TH 10/75, vehicles experience reduced mobility due to congestion (delay) and poor travel time reliability caused by train blockages at at-grade railroad crossings. There is no efficient north-south route for vehicles across the BNSF KO and Prosper Subdivisions. This creates reduced mobility and increased safety risks between north and south Moorhead and along TH 10/75 through downtown. Reduced mobility is especially pronounced along 11th Street, a minor county arterial, due to south Moorhead's population growth, retail stores and higher education. 11th Street is also used by emergency services located in north Moorhead. The KO and Prosper Subdivisions

currently experience approximately 48 and 22 train blockages per day, respectively, including one or two switching movements. Rail traffic volumes are anticipated to increase by approximately 1 percent annually to 62 and 28 blockages per day, respectively, by 2045.

Moorhead is bisected by BNSF Railway's KO and Prosper subdivisions. Currently, these two lines carry a combined total of 70 trains per day impacting 9 at-grade crossings. These train impacts result in crossings being blocked up to 22 percent of the day, equating to 5.3 hours of blocked crossings per day. Average train blockage times at the BNSF KO and BNSF Prosper lines are 3.2 minutes and 4.8 minutes, respectively. Blockage times can increase by 4-5 minutes to clear the vehicular queues that have built up during traffic peaks.

The current daily traffic volume on 11th Street through the project is approximately 6,000. The current daily traffic volume to the west at 8th Street is approximately 15,000 and to the east at 14th Street is approximately 4,000. The current daily east/west traffic volume is approximately 18,000 on Main Avenue, 10,000 on Center Avenue, and 12,000 on 1st Avenue.

By removing the at-grade railroad/highway crossings in downtown Moorhead at both 11th Street crossings, the Project will reduce rail exposures resulting from high train and traffic volumes, improve traffic capacity and safety on the crossing streets, reduce traffic delays, improve movement of freight, improve emergency response times, and stimulate economic growth.

Although the Project has independent utility, when combined with work already completed or being completed in the area along TH10 and TH75, it will provide an integrated and complete approach to improving long standing safety, mobility, and economic needs facing the city of Moorhead and the State of Minnesota. This project is also part of the effort to improve the connectivity of regionally and nationally significant transportation assets and is located along the Great Northern Corridor.

Key elements of the project include:

- New rail bridges to separate the crossings of the BNSF KO (double Track) and Prosper (Single track) subdivisions. Currently, MnDOT is evaluating bridge types for these bridges, including a through-girder bridge and a steel plate girder bridge. Proposers should be aware that the BNSF has expressed concerns with a through-girder bridge because this bridge type has less redundancy. Shoofly construction is anticipated to allow the new rail bridges to be constructed on the existing rail alignment while rail traffic is diverted around the new bridge construction. Communication with the BNSF is ongoing. Future discussions with BNSF on bridge type selection, construction means and methods, and track windows will help guide the work adjacent to the current rail lines and shooflies. This upfront coordination, and the contractor's participation in this effort, is expected to minimize risk and maximize efficiencies with the bridge work, temporary shoring, and associated grading/civil work to optimize the schedule and reduce cost.
- Retaining walls will make up the grade differences in much of the project area. Reducing the amount of retaining walls and optimizing the design and construction of the retaining walls needed will be important to saving cost and time.
- Dewatering and drainage needed during construction and once construction of the final pumping station/pond and outfall are complete will be key elements of the project given the proximity to the Red River and BNSF's rail lines. This will require a good plan to manage water during the project's construction phase.
- New signals at Main/11th, Center/11th, and 1st/11th.

It is anticipated that the Project's construction will begin in the Spring of 2024. Potential options to begin critical work as early as the Fall of 2023 will be evaluated during the design development. It is anticipated that all major work (except maintenance and final cleanup) will be completed by Fall/Winter of 2025.

It is assumed that at least two of the east/west roadways (1st, Center Avenue and Main Avenue) will be maintained through the project area while each underpass is being constructed. Several local routes will be used by the traveling public and some of these routes may require improvements to handle the added traffic. The details of how to handle the local system traffic and construction staging will be addressed in collaboration with the CM/GC Contractor during the design process.

Access for pedestrians and local businesses will need to be maintained/provided during the Project's construction phase. Securing the railroad property will also be required during the Project's construction phase.

Sanitary and water utility relocations are expected to be part of this project. Utility coordination will be critical to the project and to optimizing the schedule. Utilities have been contacted to begin the process of informing them about the upcoming work. These utilities include sanitary sewer, water, power, and telecommunications.

R/W acquisition for this project is underway to allow for early buyouts of available parcels and will continue through the development of the final plans.

It is anticipated that some of the area in/around the railroad property will be contaminated.

Additional information regarding the T.H. 10/75 – 11th Street Underpass Project is available at the following project website: <http://www.dot.state.mn.us/d4/projects/moorhead11thstunderpass/index.html>

Reference and background materials for this project are available at the following project supplemental information website: <http://www.dot.state.mn.us/d4/bidding/moorhead/>

Additional information regarding MnDOT's CMGC process can be found on MnDOT's CMGC Website: <http://www.dot.state.mn.us/const/tools/const-manager-general-contractor.html>

Proposers are advised that reference materials are updated regularly, and Proposers are responsible for checking the websites for new or updated materials. In the event of any discrepancies between the information on the project ftp site and the project website, the information on the project ftp site will take precedent.

1.4 STATUS OF NEPA ENVIRONMENTAL DOCUMENT

The current environmental process for this project is a federal Non-programmatic Categorical Exclusion. This document must be approved by MnDOT's Chief Environmental Officer and FHWA. Project impacts will be determined as the project progresses through design. Work on the document is underway, with completion anticipated to occur by the Summer of 2021. The documentation process must be complete prior to soliciting a price proposal/bid for construction (including any early work packages, such as those for material procurement).

MnDOT makes no commitment as to any alternative under evaluation in the NEPA process, including the no-build alternative. MnDOT is required to evaluate a range of alternatives that meet the project's purpose and need and to consider the comparative merits of all alternatives under consideration in the environmental process (including the no-build alternatives) as the alternatives are being evaluated and fairly considered.

Although part of the CMGC Contractor’s scope of work will include providing technical assistance as alternatives are evaluated as part of the NEPA process, the CMGC Contractor shall not have any role in the preparation of the NEPA document nor will the CMGC Contractor have any decision making responsibility with respect to the NEPA process.

The CMGC Contractor will, at the discretion of MnDOT, assist with design review and activities to be undertaken for the purposes of defining the project alternatives and completing the alternatives analysis and review process (including new or hybrid alternatives that may be developed through the NEPA process); complying with other environmental laws and regulations; supporting agency coordination, public involvement, permit applications, or development of mitigation plans; or developing the design of the preferred alternative to a higher level of detail when the lead agencies agree that it is warranted. The CMGC Contractor may be requested to provide information about the project and possible mitigation actions, and its work product may be considered in the NEPA analysis and included in the final Categorical Exclusion.

Because NEPA requires that MnDOT consider the no-build alternative, MnDOT reserves the right to unilaterally terminate the CMGC Contractor’s Professional/Technical (P/T) services contract if the no-build alternative is selected.

All environmental and mitigation measures identified in the NEPA documentation and committed to in the NEPA determination for the selected alternative will be implemented.

No construction will be allowed prior to the completion of the NEPA process for the Project. This includes entering into a construction contract (including those for early work packages such as advanced material acquisition or site work) with MnDOT.

1.5 PROCUREMENT METHOD

MnDOT is seeking contracting firms that are committed to quality, safety, and have proven experience with bridge and heavy highway construction that includes: railroad bridges, retaining walls, temporary shoring, storm sewer pump station/ponds, and significant dewatering. Experience should also include working with poor soils, contaminated materials, and complex staging and maintenance of traffic needs. Contracting teams must be willing to partner with MnDOT and other stakeholders for the mutual success of the project.

The CMGC Contractor selection process will consist of a one-step qualifications-based selection process. Proposers will submit a Proposal in response to a Request for Proposals (RFP) issued by MnDOT.

Pursuant to Minnesota Statute 161.3209, MnDOT will award a Professional / Technical (P/T) Services Contract (if at all) for pre-construction services to the responsive and responsible Proposer offering a Proposal that has the highest score, meets the standards established by MnDOT, and successfully negotiates an acceptable preconstruction services scope of work and fee. MnDOT reserves the right to reject any or all Proposals. MnDOT also reserves the right to enter into negotiations with the second ranked proposer if negotiations fail with the highest ranked proposer.

During the preconstruction stage of the project, MnDOT progresses design by preparing final plans and specifications for the entire project. However, MnDOT may elect to progress design in phases by preparing plans and specifications for separate and severable work packages to accelerate schedule or reduce costs. Once the plans and specifications for the entire project, or a work package, are complete, the CMGC Contractor is given an opportunity to provide a price proposal to construct the Project. Upon review and approval of the CMGC Contractor's price proposal, MnDOT then awards a construction contract to the CMGC Contractor, who becomes the General Contractor for the construction of the Project. The CMGC Contractor will also be required to provide payment and performance bonds covering the Project. If MnDOT and the CMGC Contractor fail to reach agreement on the cost for construction, MnDOT may terminate the CMGC Contractor's professional/technical services contract without penalty or payment (except payment for previously performed pre-construction services) and procure the construction of the Project by some other method. If there are severable work packages on a project, the CMGC contractor will be allowed to continue to perform construction services for previously executed work packages, but MnDOT will procure future work packages by another procurement method.

1.6 PROJECT GOALS

- Provide an efficient north-south route for vehicles under the BNSF Railroad KO and Prosper Subdivisions in Downtown Moorhead to improve vehicle mobility (including for transit and emergency services) and travel time reliability, improve safety, and improve pedestrian accessibility.
- Complete the project (construction, engineering, right-of-way) within the budget.
- Substantial completion of the project's construction within two years.
- Optimize the schedule and construction staging/maintenance of traffic to minimize impacts to the community, traveling public, and railroad.
- Design and construct a quality Project that minimizes future maintenance.
- Provide a safe work environment for the workers, community, and traveling public during construction.
- Minimize impacts to the environment.
- Deliver a project that provides the best-value.
- Build a professional and collaborative Project Team among the owner, designers, contractors and stakeholders using the CMGC delivery method.
- Maintain public trust and confidence in the Project and the CMGC process.

1.7 CHANGE IN PROPOSER'S ORGANIZATION

It is expected that Key Personnel presented in the Proposal will be available for the duration of the preconstruction and construction phases for the Project. After submittal of their Proposal, if a Proposer

wishes to change its organization from that described in its Proposal, Proposer must obtain written approval of the change from the Commissioner. This includes any changes in the form of organization of any CMGC firm or individual identified in the Proposal (including additions, deletions, and reorganization). Modifications to the Proposer’s Team or Key Personnel listed in the Proposal will not be approved without justification. Examples of possible justification include death of a team member, changes in employment status, bankruptcy, inability to perform, organizational conflict of interest, or other such significant cause. To qualify for the Commissioner’s approval, the written request must document that the proposed removed, replaced, or added CMGC firm or individual will be equal to or better than the CMGC firm or individual identified in the Proposal. The Commissioner will use the criteria specified in the RFP to evaluate all requests. Any such request must be addressed to the Project Manager at the address set forth in Section 3.3. The Commissioner is under no obligation to approve such requests and may approve or disapprove a portion of the request or the entire request at his or her sole discretion.

1.8 ESTIMATED COST; MAXIMUM TIME ALLOWED

The estimated construction cost for the Project is between \$65 Million and \$85 Million. The associated funding is still being finalized. Currently, the Project is partly funded. MnDOT plans to set a budget for the project at or before the project’s 30% design.

Construction is anticipated to begin in the Spring of 2024 and to be substantially complete (minus maintenance and final cleanup/restoration) by the Fall of 2025. Potential options to begin critical work as early as the Fall of 2023 will be evaluated during the design development.

1.9 WORK PACKAGES

As used in this RFP, “Construction Services” means the physical construction work undertaken by a CM/GC contractor to construct the Project or a portion of the Project (including any early work packages). This means that the construction services phase of this Project may occur as a single contract for the project, or through a combination of contracts covering portions of the CM/GC Project.

If MnDOT elects to proceed with a combination of contracts, each contract must meet two conditions: (1) it must have independent utility, meaning it must complete a discrete portion of the project and (2) the portion of work must be “severable” from the remainder of the project such that it will be logistically possible for another contractor to complete the remainder of the project if MnDOT and the CMGC Contractor are unable to reach an agreed to price for future work packages.

In addition, if MnDOT has a delay in approving or funding work packages, and that delay results in the CM/GC contractor demobilizing or being directed to demobilize, then MnDOT will consider concluding the Construction Services. If Construction Services are concluded, MnDOT may use a new procurement to complete all or portions of the remaining work.

1.10 DISADVANTAGED BUSINESS ENTERPRISES

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

in accordance with regulation of the DOT, 49 CFR Part 26. In this regard, the CMGC Contractor will take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform the contract.

There is no DBE goal for the CMGC Contractor’s preconstruction services contract.

MnDOT will identify a DBE goal for each federally funded construction contract issued for this project. The DBE goal will typically be identified at approximately the 60% design for each respective construction contract.

Responders are directed to read the DBE Special Provisions, posted at the following MnDOT website – <http://www.dot.state.mn.us/civilrights/forms.html#dbe>. To view a listing of certified DBEs, contact MnDOT’s Office of Civil Rights at 651-366-3073 or visit www.dot.state.mn.us/eeocm/index.html. The DBE participation goal may be attained by means of:

1. A subcontract agreement or affidavit with a Minnesota Unified Certification Program (Mn/UCP) certified DBE;
2. An equipment lease agreement with a Mn/UCP certified DBE;
3. A joint venture with a Mn/UCP certified DBE (the joint venture must have the approval of MnDOT’s Office of Civil Rights prior to submitting the proposal);
4. A purchase agreement with a Mn/UCP certified DBE supplier (60% of the suppliers contracted amount will be credited toward the DBE goal), or;
5. Other services pre-approved by MnDOT’s Office of Civil Rights.

1.11 EQUAL EMPLOYMENT OPPORTUNITY

The Proposer will be required to follow State of Minnesota Equal Employment Opportunity (EEO) policies.

In accordance with the Minnesota Human Rights Act, Minnesota Statute 363A.08 Unfair Discriminatory Practices, MnDOT will affirmatively assure that on any project constructed pursuant to this advertisement, equal employment opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.

Work Force Certification

For all Contracts estimated to be in excess of \$100,000, responders are required to complete the attached “Work Force Certification” form and submit it as part of their Proposal. As required by Minnesota Rule 5000.3600, “It is hereby agreed between the parties that Minnesota Statute §363A.36 and Minnesota Rule 5000.3400 – 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minnesota Statute §363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are available upon request from MnDOT.”

1.12 TARGETED GROUP BUSINESSES (TGB) AND VETERAN-OWNED SMALL BUSINESSES

Any non-federally funded construction contracts may include goals for TGB and Veteran-Owned Small Business participation.

1.13 E-VERIFY CERTIFICATION (IN ACCORDANCE WITH MINNESOTA STATUTES §16C.075)

By submitting a proposal for services in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be 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. In the event of contract award, Contractor must be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

1.14 FEDERAL LOBBYING RESTRICTIONS

Section 1352, Title 31, United States Code (U.S.C.), prohibits federal funds from being expended by the recipient or any lower tier sub recipient of a federal aid contract to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal aid contract, the making of any federal grant or loan, or the entering into of any cooperative agreement. Section 1352 also requires Proposers to disclose any funds expended for lobbying in connection with a federal aid contract, as well as requiring disclosure by lower-tier contractors of funds expended for lobbying in connection with subcontracts exceeding \$100,000.

Federal money will be used (or may potentially be used) to pay for all or part of the work under the contract; therefore, responders must complete the attached “Certification Regarding Lobbying” form and submit it as part of their proposal.

1.15 U.S. DEPARTMENT OF TRANSPORTATION “HOTLINE”

The U.S. Department of Transportation (USDOT) provides a toll-free “hotline” service to report bid rigging activities. Bid rigging activities can be reported Monday through Friday, between 8:00 a.m. and 5:00 p.m., Eastern Time, telephone (800) 424-9071. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the hotline to report these activities. The hotline is part of the USDOT’s continuing effort to identify and investigate highway construction contract fraud and abuse, and it is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

1.16 NOTICES

Proposer must take note of the information provided in the Notices to Proposers concerning Prompt Payment of Subcontractors and Bid Rigging, which are included in Attachments 1 and 2, respectively. The Proposer must also take note of the current Debarment/Suspension Notice on the following website: <http://www.dot.state.mn.us/pre-letting/prov/order/suspension.pdf>

1.17 DEBARMENT AND CERTIFICATION

1.17.1 Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions.

Contractor certifies that neither it nor its principals is presently debarred or suspended by the state, or any of its departments, commissions, agencies or political subdivisions. Contractor's certification is a material representation upon which the contract award was based. Contractor will provide immediate written notice to State's Authorized Representative if at any time it learns this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

1.17.2 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

Federal money may potentially be used to pay for part of the work under the construction contracts; therefore, this contract is a covered transaction for purposes of 49 Code of Federal Regulations ("CFR") Part 29. As such, the successful responder 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 successful responder will be 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. By signing and submitting its response, responders certifies as follows:

The certification in this clause is a material representation of fact relied upon by the MnDOT. If it is later determined that the responder knowingly rendered an erroneous certification, in addition to remedies available to the MnDOT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The responder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The responder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Federal Debarment List can be found at the following website: <http://sam.gov>.

1.18 EQUAL PAY

If the proposal submitted in response to this RFP could be in excess of \$500,000, responders are required to complete the attached "Equal Pay Certification" form and submit it as part of their proposal. As required by Minnesota Statutes §363A.44, Laws of Minnesota 2014 Chapter 239, the Responder must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A responder is exempt if it has not employed more than 40 full-time employees on any single working day in one state during the previous 12 months. Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at compliance.MDHR@state.mn.us.

1.19 CERTIFICATION OF NONDISCRIMINATION (IN ACCORDANCE WITH MINNESOTA STATUTES §16C.053)

Responders must certify that they do not engage in and have no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor’s business. For purposes of this section, “discrimination” includes, but is not limited to, engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

1.20 SUBCONTRACTOR REPORTING

The State of Minnesota is committed to diversity and inclusion in its public procurement process. If the total value of this contract may exceed \$500,000.00, including all extension options, Contractor will be required to track and report, on a quarterly basis, the amount spent with diverse small businesses. When this applies, Contractor will be provided free access to a portal for this purpose, and the requirement will continue as long as the contract is in effect.

1.21 INFORMATIONAL PRESENTATION

MNDOT HAS PROVIDED AN INFORMATIONAL PRESENTATION FOR ALL POTENTIAL PROPOSERS. THE PRESENTATION CAN BE ACCESSED ONLINE AT:

<https://youtu.be/0SLr3pB4Csg>

2 PROCUREMENT AND PROJECT SCHEDULE

The deadlines and due dates for procurement shown in Table 2.1 apply to this RFP. MnDOT reserves the right to modify the CMGC Contractor selection date at any time if MnDOT needs additional time review Proposals. MnDOT may at its discretion amend the procurement schedule by issuing an addendum to the RFP.

The anticipated project design and construction schedule is shown in Table 2.2. MnDOT may at its discretion amend the project schedule shown in Table 2.2 based on the actual design and construction schedule that is developed, with the CMGC Contractor, during the preconstruction phase of the project.

Table 2.1 - Procurement Schedule	
Issue Draft CMGC RFP	March 9, 2021
Issue CMGC RFP	March 23, 2021
Deadline for Proposers to Submit Requests for Clarification on the RFP	April 27, 2021
Responses to Requests for Clarification on RFP Issued	April 29, 2021
Deadline for Proposers to Submit Proposal	May 25, 2021
CMGC Contractor Selected	June 23, 2021
Notice to Proceed – P/T Services Contract	July 22, 2021

Table 2.2 - Preliminary Project Schedule	
Kickoff Meeting	July 2021
Selection of Preferred Alternative/Final Design Kickoff	Winter 2021/2022
30% Design-Review/Cost Estimate/Schedule	Spring 2022
60% Design Review/Cost Estimate/Schedule	Fall 2022
90% Design Review/Cost Estimate/Schedule	Spring 2023
Issue for Bid	Fall/Winter 2023
Start Construction	Spring 2024
Substantial Completion of the Overall Project	Fall 2025

3 PROCUREMENT PROCESS

3.1 CONFIDENTIALITY DURING EVALUATION AND SELECTION PROCESS

Subject to the [Minnesota Government Data Practices Act](#), MnDOT has taken measures to protect the confidentiality of all submitted Proposals during the entire evaluation and selection process. Every person involved in the process must sign a confidentiality and nondisclosure agreement. However, under no circumstances will MnDOT be responsible or liable to a Proposer or any other party as a result of disclosing any materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake, or negligence on the part of MnDOT or its respective officers, employees, contractors, or consultants.

3.2 EXAMINATION OF RFP AND REQUESTS FOR CLARIFICATION

Proposer must be solely responsible for 1) reviewing and examining, with appropriate care, all RFP documents, including any supplements, addenda, and clarification notices issued, 2) requesting clarification or interpretation of any material discrepancy, deficiency, ambiguity, error, or omission in the RFP documents, or of any provision Proposer fails to understand and 3) informing itself with respect to any and all conditions that may in any way affect the cost or nature of the Proposal or the performance of the Work after Contract award. Failure of Proposer to inform itself as described herein must be at its sole risk, and no relief for error or omission will be provided by MnDOT.

3.3 MNDOT’S PROJECT MANAGER

MnDOT’s Project Manager for the Project is:

Mail Delivery: Justin Knopf, PE
 Project Manager
 Minnesota Department of Transportation
 District 4 – Detroit Lakes

E-mail: justin.knopf@state.mn.us

3.4 COMMUNICATIONS

MnDOT’s Project Manager is the sole MnDOT contact person and addressee for receiving clarification requests and all other communications about the Project, the RFP, and Proposal submittal. Except for communications expressly permitted by this RFP or delegated by the Project Manager, Proposer must not discuss the RFP with other MnDOT staff members, FHWA, or MnDOT consultants involved with the Project before Contract award or cancellation of the RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of MnDOT.

The Proposer must notify the Project Manager of a sole primary contact to send and receive information from MnDOT. This information includes, but is not limited to, Requests for Clarification and receipt of Addendums.

CMGC programmatic questions and questions related to any Protest (See [Section 3.9](#)) must be e-mailed (written inquiries only) to MnDOT’s CMGC Program Manager:

Contact: Kevin Hagness
CMGC Program Manager
Minnesota Department of Transportation

E-mail: kevin.hagness@state.mn.us

3.5 SUBMISSION FOR REQUEST FOR CLARIFICATIONS

All inquiries and comments regarding the Project must be made by e-mail to MnDOT’s Project Manager as specified in [Section 3.3](#) by 2:00 PM, Central Time, on the Clarification Submittal Deadline (identified in [Section 2](#)). Only written inquiries (e-mail or by letter) will be accepted. No oral requests for clarification or interpretation, whether in person or by telephone, will be accepted. Proposers must submit all inquiries and comments using the Request for Clarification form available on the CMGC website. If Proposer has meetings or discussions with agencies or entities other than MnDOT during the procurement phase, Proposer must be responsible for verifying with MnDOT’s Project Manager any Project-related information it so receives.

3.6 RFP ADDENDA AND CLARIFICATION NOTICES

If MnDOT determines at its sole discretion that interpretation or clarification of the RFP or any other consideration requires a revision of the RFP, MnDOT will prepare and issue a written addendum.

MnDOT may issue clarification notices listing questions received from Proposers and the responses given by MnDOT. All questions and answers will be posted on MnDOT’s Consultant Services Web Page under the “P/T Notices” section. **Please note that questions will be posted verbatim as submitted.** Questions regarding this formal solicitation must be received by MnDOT no later than 2:00 Central Daylight Time by the date provided in the procurement schedule, Table 2.1 MnDOT anticipates responding to such questions no later than 2:00 PM Central Daylight Time on the date provided in Table 2.1

Any changes that need to be made to this RFP will be posted on MnDOT’s Consultant Services Web Page under the “P/T Notices” section. All prospective Proposers will be responsible for checking the web page for any addendums to this formal Solicitation and any questions that have been answered.

MnDOT will not be bound by, and Proposers must not rely on, any oral communication regarding the Project or RFP documents; and Proposer must not rely on any MnDOT or other communication except the RFP documents and addenda notices.

3.7 WITHDRAWAL OF PROPOSAL

A Proposal may be withdrawn and resubmitted any time prior to the deadline for submitting the Proposal, as shown in Table 2.1. No Proposal may be changed, amended, or modified after the deadline for submitting the Proposal. No Proposal may be withdrawn after the deadline for submitting the Proposal without a written request by the Proposer stating the reasons for withdrawing the Proposal and acceptance of the request by MnDOT. All decisions are at the sole discretion of MnDOT.

3.8 MNDOT'S RIGHTS

Proposer is solely responsible for ensuring that its Proposal is clear, correct, and internally consistent. MnDOT reserves the right, at its sole discretion (but is not obligated), to:

- a) Investigate the qualifications of any Proposer;
- b) Seek or obtain data from any source related to the Proposals;
- c) Require confirmation of information furnished by a Proposer;
- d) Require additional information from a Proposer concerning its Proposal;
- e) Seek and receive clarifications to a Proposal;
- f) Require additional evidence of qualifications to perform the Work;
- g) Modify the RFP process by issuing an addendum to the RFP;
- h) Waive minor deficiencies and irregularities in a Proposal;
- i) Reject any or all of the Proposals;
- j) Cancel, modify, or withdraw the RFP;
- k) Issue a new RFP;
- l) Cancel a Contract signed by the selected CMGC Contractor but not yet executed by MnDOT;
- m) Enter into negotiations with the second ranked proposer if negotiations fail with the highest ranked proposer.

The RFP does not commit MnDOT to enter into a Contract or proceed with the procurement described herein. By submitting a Proposal, the Proposer understands and acknowledges the following:

3.8.1 Assumed Requirements

The Proposal presented is based on assumed requirements of the proposed Project; and, that MnDOT has made no written or oral representations that any such assumed requirements are accurate should a conflict arise from the presented Proposal. Proposer is required to qualify all assumptions it makes.

3.8.2 Cost of Submission

All costs incurred by the Proposer as a result of the Proposer's efforts to participate in this selection process must be at the sole risk and obligation of the Proposer.

3.8.3 Reimbursement

MnDOT will not provide compensation to the Proposer for any expenses incurred for the Proposal preparation.

3.8.4 Right to Use Ideas and Information from Proposals

All ideas included in the Proposer's Proposal will become the property of MnDOT. MnDOT reserves the right to use any ideas or information contained in a successful or unsuccessful Proposal on this project or with any subsequent project, without any obligation to compensate the Proposer.

3.8.5 Execution of Professional/Technical (P/T) Services Contract

MnDOT makes no guarantee that the Department will enter into a P/T Services contract as a result of this RFP, and reserves the right to accept or reject any or all Proposals, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFP or resulting contract when deemed to be in the Project's best interest. Representations made within the Proposal will be binding on responding firms.

3.9 PROTEST PROCEDURES

This section sets forth the exclusive protest remedies available with respect to this RFP. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein. These provisions are included in this RFP expressly in consideration for such waiver and agreement by the Proposers. Such waiver and agreement by each Proposer are also consideration to each other Proposer for making the same waiver and agreement.

If a Proposer disregards, disputes or does not follow the exclusive protest remedies set forth in this RFP, it must indemnify, defend, protect and hold harmless MnDOT, its officers, officials, employees, agents, representatives and consultants from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees and damages incurred or suffered as a result. The submission of a Proposal by a Proposer must be deemed the Proposer's irrevocable and unconditional agreement with such indemnification obligation.

3.9.1 Protests Regarding Facially Apparent Deficiencies in RFP and Selection Procedures

The Proposer may protest the terms of this RFP or selection procedures prior to the time for submission of Proposals on the grounds that (a) a material provision in this RFP or selection process is ambiguous, (b) any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement, or (c) this RFP in whole or in part exceeds the authority of MnDOT. Protests regarding this RFP and selection procedures must be filed only after the Proposer has informally discussed the nature and basis of the protest with MnDOT’s CMGC Program Manager in an effort to remove the grounds for protest.

Protests regarding this RFP must completely and succinctly state the grounds for protest and must include all factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements, if any, must be submitted under penalty of perjury.

Protests regarding this RFP must be filed as soon as the basis for protest is known to the Proposer, but in any event it must be actually received no later than ten calendar days before the Proposal due date, provided that protests regarding an addendum to this RFP must be filed and actually received no later than seven calendar days after the addendum to this RFP is issued (or no later than the Proposal due date, if earlier).

Protests regarding this RFP must be filed in writing by hand delivery or courier to the Protest Official with a copy to MnDOT’s CMGC Program Manager. The “Protest Official” is:

Chief Procurement Officer Betsy Hayes or her designee
Department of Administration
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

MnDOT will distribute copies of the protest to the other Proposers and may, but need not, request other Proposers to submit statements or arguments regarding the protest and may, in its sole discretion, discuss the protest with the protesting Proposer. If other Proposers are requested to submit statements or arguments, they may file a statement in support of or in opposition to the protest within seven calendar days of the request. MnDOT may also file a written statement with the Protest Official.

No hearing will be held on the protest. The Protest Official or designee will review the facts and arguments presented in the written submissions and will decide the protest on the basis of the written submissions and any clarifications or additional information from MnDOT, the Proposers, or other resources as may be required. The Protest Official will consider whether MnDOT’s position (a) is reasonable, (b) is in compliance with the Minnesota CMGC statute, Minn. Stat. §161.3207 et. seq. and (c) meets applicable legal standards. The protest Official will recommend to the MnDOT Commissioner whether any changes or addenda to the RFP and procurement process are warranted. The Protest Official’s recommendation will be in writing and will state the reasons for the decision. MnDOT will furnish copies of the decision in writing to each Proposer. The Commissioner will issue MnDOT’s final decision within ten calendar days of receiving the recommendation and include written reasons for the decision (or incorporate those of the Protest Official). The decision must be final and conclusive. If necessary to address the issues raised in the

protest, MnDOT will make appropriate revisions to this RFP by issuing addenda. MnDOT may extend the proposal due date, if necessary, to address any protest issues.

The failure of a Proposer to raise a ground for a protest regarding this RFP within the applicable period must constitute an unconditional waiver of the right to protest the terms of this RFP and must preclude consideration of that ground in any protest of qualification of a Proposer unless such ground was not and could not have been known to the Proposer in time to protest prior to the final date for such protests.

3.9.2 Protests Regarding Responsiveness

A Proposer may protest the results of the responsiveness evaluation by filing a written notice of protest by hand delivery or courier to the Protest Official with a copy to MnDOT's CMGC Program Manager. The notice of protest must specifically state the grounds of the protest.

Notice of protest of any decision to accept or disqualify a Proposal on responsiveness grounds must be filed within seven calendar days after the earliest of notification of non-responsiveness, or the public announcement. Within seven calendar days of the notice of protest, the protesting Proposer must file with the Protest Official, with a copy to MnDOT's CMGC Program Manager, a detailed statement of the grounds, legal authorities and facts, including all documents and evidentiary statements, in support of the protest. Evidentiary statements, if any, must be submitted under penalty of perjury.

Failure to file a notice of protest or a detailed statement within the applicable period must constitute an unconditional waiver of the right to protest the evaluation process and decisions thereunder, other than any protest based on facts not reasonably ascertainable as of such date.

MnDOT may, at its option, file a written response to the Protest with the Protest Official, with a copy to the Proposer and any Proposers who have filed statements with the Protest Officials. MnDOT will respond within 14 calendar days upon receipt of the protesting proposer's detailed statement of protest.

The Protest Official will consider whether the Committee's decision (a) is reasonable; (b) is in compliance with the Minnesota CMGC statute, Minn. Stat. §161.3207 et. seq. (c) meets applicable legal standards. The Protest Official will review the facts and arguments presented in the written submissions of the protesting firm, and the written submission of MnDOT, if any. The Protest Official may also seek clarifications and information from MnDOT, Proposers or other resources as may be required. The Protest Official will recommend, within 14 calendar days after MnDOT's response, that the MnDOT Commissioner, acting through the Committee, either (1) affirm the Committee's original decision; or, depending on the nature of the protest, (2) reinstate a firm disqualified on responsiveness grounds. If MnDOT does not submit a written response, the Protest Official will make a recommendation within 21 calendar days upon the receipt of the detailed statement of protest. The Protest Official's recommendation will be in writing and include the reasons for the decision. The Commissioner will issue MnDOT's final decision within ten calendar days of receiving the recommendation, and include written reasons for the decision (or incorporate those of the Protest Official). The Commissioner will deliver the written decision to the protesting Proposer and copies to the other Proposers.

If the Protest Official or his designee concludes that the Proposer filing the protest has established a basis for protest, the Protest Official or his designee will determine what remedial steps, if any, are necessary or

appropriate to address the issues raised in the protest. Such steps may include, without limitation, withdrawing or revising the decisions, issuing a new request for Proposal or taking other appropriate actions.

3.9.3 Protests Regarding Determination or Award of P/T Services Contract

A Proposer may protest any determination by MnDOT regarding the award of the P/T Services contract made by MnDOT by filing a written notice of protest by hand delivery or courier to the Protest Official with a copy to MnDOT's CMGC Program Manager. The protest must specifically state the grounds of the protest.

Protest must be filed no later than seven calendar days after the results of the CMGC evaluations are posted on MnDOT's CMGC website. The Proposer must file the protest to the Protest Official, with a copy to MnDOT's CMGC Program Manager. The protest must include a detailed statement of the grounds, legal authorities, and facts, including all documents and evidentiary statements, in support of the protest. Evidentiary statements, if any, must be supported by affidavit based on personal knowledge except where stated to be based on information and belief.

Failure to file a protest within the applicable period must constitute an unconditional waiver of the right to protest the applicable evaluation process and decisions thereunder, other than any protest based on facts not reasonably ascertainable as of such date.

MnDOT may, at its option, file a written response to the protest with the Protest Official. The Protest Official will only consider, based on a preponderance of the evidence, whether MnDOT's determination of award is arbitrary, capricious, or contrary to law. The Protest Official will recommend, within 15 calendar days after the Protest Official receives the protest or MnDOT's response (if applicable), that the Commissioner either affirm MnDOT's original determination or recommend remedial steps, if appropriate, to address the issues raised in the protest. Such steps may include, without limitation, withdrawing or revising the determination, issuing a new Request for Proposal, or taking other appropriate actions. The Protest Official may also request extensions to the 15 calendar days. Extension will only be granted if both MnDOT and the protesting Proposer agree to such request. The Protest Official's recommendation will be in writing and will include the reasons for the decision. The Protest Official will furnish copies of the recommendation to the Commissioner of Transportation and the Protestor. The Commissioner will issue MnDOT's final decision within 10 calendar days of receiving the recommendation, and include written reasons for the decision (or incorporate those of the Protest Official). The Commissioner will deliver the written decision to the protesting Proposer and copies to the other Proposers. The decision must be final and conclusive and not subject to legal challenge unless arbitrary.

MnDOT will not execute the Contract until at least seven calendar days after the results of the CMGC evaluations are posted on MnDOT's CMGC website. This timeline may be waived if all Proposers agree to such waiver.

3.9.4 Costs and Damages

All costs of a protest must be the responsibility of the protestor and undertaken at the protestor's expense. In addition, if the protest is denied, the Proposer filing the protest may be liable for MnDOT's costs

reasonably incurred in defending against the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by MnDOT as a consequence of the protest. MnDOT must not be liable for damages to the Proposer filing the protest or to any participant in the protest, on any basis, express or implied.

4 PROPOSAL DELIVERY, CONTENT AND FORMAT

4.1 GENERAL

The following section describes requirements that all Proposers must satisfy in submitting Proposals. Failure of any Proposer to submit their Proposal as required in this RFP may result in rejection of its Proposal. **A maximum of 100 points is possible for the Proposal.**

4.2 DUE DATE, TIME, AND LOCATION

Proposals must be received by **11:00 AM**, Central Daylight Time, on the Proposal Due Date (identified in Section 2) and must be delivered by e-mail in pdf format to MnDOT as set forth below:

Contact: Kevin Hagness
CM/GC Program Manager
Minnesota Department of Transportation

E-mail: kevin.hagness@state.mn.us

The maximum e-mail size MnDOT can receive is 25 MB. If necessary, break the pdf into multiple e-mails to meet this requirement. Any Proposal that fails to meet the deadline or delivery requirement will be rejected without opening, consideration, or evaluation. Proposers will receive a confirmation e-mail upon successful delivery to MnDOT.

4.3 FORMAT

- **Front Cover:** The front cover of each Proposal must be clearly labeled as follows:
 - “TH 10/75 – 11th Street Underpass Project”
 - “CMGC Technical Proposal”
 - Proposer’s name, contact person, and address
- **Language:** All information including dimensions must be in English.
- **Font:** All narrative text must be Times New Roman, a minimum of eleven (11) points in size and single-spaced. Text contained on charts, exhibits, the project experience table, and other illustrative material must be no smaller than 10-point Times New Roman. The cover font can be larger.
- **Page Size:** All information, except the Project Experience Table and Organizational Chart, must be either printed on 8.5-inch x 11-inch paper or designed to print on 8.5-inch x 11-inch paper. The Project Experience Table and Organizational Chart may be either printed on 11-inch x 17-inch

paper or designed to print on 11-inch x 17-inch paper.

- **Page Margins:** Page margins must be set at 0.75 inches minimum, not including headers or footers.
- **Page Limit:** Proposal(s) must not exceed 20 pages in length. Front Cover, Executive Summary (Cover Letter and Table of Contents), section dividers, appendices, and required forms are not included in page limits. Resumes for Key Personnel are limited to two-pages per position as outlined in Section 4.
- **Dividers:** Section dividers in bound copies, for the ease of finding information in the Proposal, are welcomed. Sections dividers must only be used to convey the heading of the section and must not be used to supplement or enhance any information included in the Proposal (photos, but not photo renderings, on the dividers are acceptable).
- **Appendices**
 - Appendix A – Organizational Chart
 - Appendix B – Project Experience Table
 - Appendix C – Key Personnel Resumes (maximum of a two-page resume per position)
 - Appendix D – Legal and Financial (submit in a separate pdf)

PROPOSERS MAY SUBMIT THEIR PROPOSAL (INCLUDING APPENDICES A, B AND C) IN ONE (1) PDF. APPENDIX D, LEGAL AND FINANCIAL, MUST BE SUBMITTED IN A SEPARATE PDF.

4.4 PROPOSAL CONTENT

A submission of a Proposal in response to this RFP indicates the Proposer’s acceptance of the evaluation process as detailed in Section 5 and the recognition that subjective judgments must be made by the Selection Committee during the evaluation process and in its final selection.

This section describes the order of and specific information that must be included in the Proposal. Proposals must follow the outline of this section. Proposers must provide brief, concise information that addresses the requirements of the Project consistent with the evaluation criteria described in this RFP.

Documents submitted pursuant to this RFP will be subject to the Minnesota Government Data Practices Act.

Some of the information requested in this RFP is for informational purposes only, while other information will be used in the qualitative analysis of the Proposal. MnDOT will initially review RFPs to determine whether the Proposal, on its face, is responsive to this RFP per Section 5.3. A Proposal will be, on its face, responsive to this RFP if it appears to include all the components of information required by this RFP in the manner required by this RFP. This initial review does not include any qualitative assessment as to the substance of the information submitted. Those Proposals that pass this review will then be reviewed on a qualitative basis according to the criteria specified in Section 5.4.

Failure to comply with the requirements contained in the RFP, which at the discretion of the department, may result in rejection of the Proposal. Any Proposal that fails to meet the deadline requirements will be rejected and returned to the Proposer without having been opened, considered or evaluated.

The following sections describe the information that is required and how it will be used.

4.4.1 Executive Summary (Cover Letter & Table of Contents)

The executive summary must include a Cover Letter stating the business name, address, business type (e.g., corporation, partnership, joint venture) and roles of the Proposer (and Subcontractors-optional). Identify one contact person and his or her address, telephone and fax numbers, and e-mail address. This person must be the single point of contact on behalf of the Proposer organization, responsible for correspondence to and from the organization and MnDOT. MnDOT will send all Project-related communications to this contact person. Authorized representatives of the Proposer organization must sign the letter. If the Proposer is a joint venture, the joint venture members must sign the letter. If the Proposer is not yet a legal entity, they must sign the letter. The letter must certify the truth and correctness of the contents of the Proposal. The Cover Letter must be limited to one page.

The Executive Summary must also include a Table of Contents. The Table of Contents must be limited to one page.

This information will be used to identify the Proposer and its designated contact and will be reviewed for responsiveness in accordance with [Section 5.3](#) and not as part of the qualitative assessment of the Proposal.

4.4.2 Organizational Chart

Proposer must provide a graphical organizational chart as Appendix A to the Proposal. The chart must show the flow of the “chain of command” with lines identifying, by name and working title, participants who are responsible for major functions to be performed and their reporting relationships during the design and construction of the Project. The organizational chart must include the names of the Key Personnel (and company) complete with working titles in both construction and design. The chart must also identify a Project Principal who is an owner or principal authorized by the company or Joint Venture to direct the Proposer’s team or make binding decisions on behalf of the Joint Venture. The graphical organizational chart is limited to one page and no additional narrative will be considered in the evaluation. The graphical organization chart in Appendix A may be considered in the evaluation of the qualitative criteria identified in Section 4.4.4.

4.4.3 Project Experience Table

The Proposer must provide a project experience table as Appendix B to the Proposal listing relevant projects (similar in complexity, scope, and/or cost) that are ongoing or completed in the last fifteen (15) years by each member, partner, or joint venturer. Up to two 11-inches x 17-inches pages may be used for the project experience table. At a minimum, the following information must be included in the experience table for each project:

- The project/contract name.
- Year (award year and completed year).

- Project description and delivery method (design-build, design-bid-build, CMGC, etc.).
- Overall construction cost of project, including initial contract value and change orders. Provide reasons for change orders.
- Describe the Proposer’s role on the project (prime contractor, partner in joint venture, or subcontractor). If not the prime contractor, provide the construction cost for the portion of the work performed.
- Key Personnel assigned to the project (name and role).
- Subcontracts (service) used in the performance of the contract.
- Original contract completion date and actual contract completion date. If not the same dates, explain the reason for the difference.
- Provide two reference contacts with telephone numbers, email addresses and their company names. At least one reference should be the project owner. Proposers are requested to verify that the contact information provided for these projects is correct and current and are advised that if the contact information provided is not current, MnDOT may elect to exclude the experience represented by that project in determining the Proposer’s qualifications.

The project experience table in Appendix B may be considered in the evaluation of the qualitative criteria identified in Section 4.4.4.

4.4.4 Qualitative Evaluation Criteria

Proposals will be evaluated and scored based on the qualitative criteria identified in Sections 4.4.4.1 through 4.4.4.5. The maximum relative points in the scoring are shown in parentheses. MnDOT will evaluate the Proposal based on the information provided by the Proposers. MnDOT may, at its discretion, contact references to verify the information provided. Proposer may choose to provide additional information that further enhances the RFP requirements within these categories and sub-categories.

4.4.4.1 Key Personnel (30 points)

Five Key Personnel will be evaluated for this project. No additional Value Added positions will be considered in the Evaluation process, should a Proposer identify additional team members. No person can fill more than one Key Personnel position. For Key Personnel provide:

- A description of the roles, responsibilities and authorities during the preconstruction and construction phases of the TH 10/75 – 11th Street Underpass project.
- A commitment of time and availability for each of the Key Personnel. Describe where each of the Key Personnel will be headquartered during the preconstruction and construction phases and identify any other commitments each of the Key Personnel have and how those commitments will be managed to meet the commitments for this project.

- Resumes with two references for each of the Key Personnel in Appendix C to the Proposal. MnDOT may at its discretion contact these references. Resumes must include:
 - The individual’s education and work history
 - Length of tenure with the Proposer
 - Relevant experience with similar projects

The resumes in Appendix C may be considered in the evaluation of the qualitative criteria identified in Section 4.4.4.

- A description of the relevance of the individual’s qualifications and experience to his/her identified role in the Project. Include relevant experience working with railroads and working with similar soil types to the Red River Valley.
- A description of any experience working collaboratively with owners, designers, and railroads on highway and/or bridge projects and how that experience provided value to the project.
- Experience, if any, of the proposed Key Personnel successfully working together as an integrated team.

Key Personnel and their minimum qualifications are defined as follows:

Project Manager – This position is responsible for the CMGC Contractor’s overall management and coordination during the CMGC preconstruction and construction services phases of the project. This person will be the main point of communication to the Project Team.

- Must have recent experience as a project manager, including managing the construction of at least one project of similar scope and complexity (at least 7 years preferred).
- Must be able and willing to work collaboratively with MnDOT, the designer and stakeholders during the project’s preconstruction and construction phases. Experience collaborating with project owners, designers, and railroads to successfully deliver projects is preferred.
- Must have full responsibility for the prosecution of the work, act as a single point of contact for all matters and have the authority to commit company and external resources for the success of the Project.

Construction Manager – This position is primarily responsible for the planning and execution of the construction work in the field. This position is expected to be an integrated member of the CMGC preconstruction team and attend project meetings where matters related to constructability, risk and schedule are discussed. This person is expected to be on site during the construction of the Project.

- Must have recent experience as a construction manager, including managing the construction of at least one project of similar scope and complexity (at least 7 years preferred).

- Must be able and willing to work collaboratively with MnDOT, the designer and stakeholders during the project’s preconstruction and construction phases. Experience collaborating with project owners, designers, and railroads to successfully deliver projects is preferred.

Lead Cost Estimator – This position is responsible for overseeing the development of cost estimates for the Project. This person is expected to be an integrated member of the CMGC preconstruction team and attend project meetings where price, risk, schedule and other factors relevant to estimating/bidding are discussed (including design coordination meetings, milestone review meetings, risk workshops, and pricing reconciliation meetings). This position is expected to be available as needed during the project’s construction phase.

- Must have production-based (contractor-style) estimating and bidding experience for construction projects of similar scope and complexity (at least 7 years preferred).
- Must be able and willing to lead the development of open-book cost estimates/bids during the project’s preconstruction phase.

Project Specialist(s) – Two other persons that the Proposer considers key to the success of the Project should be included.

The Key Personnel will be evaluated based on:

- Experience on projects of similar scope and complexity.
- Demonstrated commitment and availability for each Key Personnel position.
- Experience with relevant collaboration on past projects.
- Experience of Key Personnel working together as a team.
- Roles and responsibilities relative to achieving the Project Goals.

4.4.4.2 Proposer’s Technical Capabilities and Experience (25 points)

Prior Experience/Performance/References:

- Describe how the Proposer’s experience, as noted in Appendix B, and technical capabilities are relevant to the TH 10/75 - 11th Street Underpass project and meeting the stated Project Goals. Identify similarities in the scope of work (including experience working with railroads and working with similar soil types to the Red River Valley), risks, schedule, and complexity of the projects to the TH 10/75 - 11th Street Underpass project.
- Describe the Proposer’s experience collaborating with owners, design firms, and railroads and how that experience is relevant to meeting the project goals for the TH 10/75 - 11th Street Underpass project.

- If the Proposer is a joint venture or association, indicate specific responsibilities of each firm.

Technical Capabilities and Experience of the Proposer will be evaluated based on:

- The relevance of the listed experience and technical capabilities to the TH 10/75 - 11th Street Underpass Project and meeting the stated Project Goals.
- The relevance of the experience collaborating with owners, design firms, and railroads to meeting the stated Project Goals.

4.4.4.3 Project Understanding and Approach (25 points)

- Provide an assessment of the TH 10/75 - 11th Street Underpass Project, as described in Section 1.3 of this RFP. The assessment should include, at a minimum, the risks associated with meeting the Project Goals and preliminary schedule and cost estimate. State whether the proposed schedule and cost estimate appear to be reasonable and include any recommendations to reduce cost, reduce risk, optimize the schedule, and meet the Project Goals.
- Provide a description of the Proposer’s recommended approach to construction activities. Include the following:
 - Proposer’s general approach to construction access and staging. Describe why this approach is best for the project and how it minimizes impacts on the community, traveling public, and Railroad.
 - Proposer’s approach to minimize environmental impacts and ensure compliance with environmental requirements.
 - Proposer’s approach and commitment to safety, including that of the workers and public.
 - Describe any potential early work packages that should be considered and why.
- Provide a description of your approach to supporting MnDOT during the preconstruction phase. Include a description of:
 - Proposer’s approach to helping MnDOT reduce cost and optimize the construction schedule.
 - Proposer’s approach to assisting MnDOT with the railroad coordination and construction staging.
- Describe any other significant risks to achieving the Project Goals and how you will help MnDOT mitigate these risks.

The Proposer will be evaluated based on:

- Assessment demonstrates an understanding of the project and the risks and provides value to mitigating risk and meeting the Project Goals.
- Ability of the Proposer’s construction approach to meet or exceed the Project Goals.

- Ability of the Proposer’s preconstruction approach to help meet or exceed the Project Goals.
- Ability to help minimize project risks to achieve the Project Goals.

4.4.4.4 Project Innovations (10 points)

One of the key benefits of the CMGC process is the ability to foster innovation through the CMGC Contractor’s participation in the design development.

- Identify the top five (5) innovations related to design or construction that may further improve MnDOT’s ability to meet or exceed the Project Goals. Innovations may include accelerated bridge construction methods. Describe the potential impacts of the innovations on cost, time, risk, and quality.
- Discuss when and how these innovations should be further evaluated by the Project Team.

Proposer will be evaluated on the following:

- The potential benefit of their proposed innovations to achieve the Project Goals.
- Their approach to help the Project Team evaluate the innovations.

4.4.4.5 Approach to Price and Subcontracting (10 points)

To help assure MnDOT that they are receiving a fair price for construction and to maintain public trust and confidence in the CMGC process, the CMGC Contractor is expected to be open and transparent with their pricing. Openness and transparency alone, however, do not ensure a fair and reasonable price.

- Describe your approach to providing open and transparent cost estimates/pricing.
- Describe Proposer’s approach to ensure that MnDOT receives a fair price for construction. Include a description of the major cost components (i.e., cost drivers) for the project and your approach to obtaining a fair price for these.
- Describe the proposer’s approach to securing labor, particularly skilled labor, for this project. Will the proposer be seeking cost reimbursement for housing or travel for your labor force? If so, why, and what value does that provide?

Subcontractor Plan: Pursuant to Minnesota Statute §161.3209, the CMGC Contractor has a minimum self-performance requirement of 30 percent.

- Describe Proposer’s plan and approach to subcontracting work for this project. Describe the scope of work your team intends to self-perform. Describe the role subcontractors will play on your team, including during the preconstruction phase, and what benefits they will provide to your team.
- Describe how subcontracting opportunities will be developed and advertised to the subcontracting community and how your Team will enhance Disadvantaged Business Enterprise (DBE) and Equal Employment Opportunities (EEO).

Proposer will be evaluated on:

- The approach to pricing/cost estimating demonstrates openness and transparency.
- The approach to price and securing labor demonstrates the ability to ensure a fair and reasonable price for the construction of this project.
- The value of the subcontractor approach and plan to meet or exceed the project goals and how well it ensures competitive subcontractor pricing and enhances DBE and EEO for the project.

4.4.5 Legal and Financial

The information required in response to this section must be submitted as Appendix D – Legal and Financial. Information provided in response to these sections will not count towards the overall page limitation. Information required by this section will be evaluated on a pass/fail basis.

4.4.5.1 Proposer Information, Certifications, and Documents

- The Proposer must provide the following:
 - a) Provide evidence that Proposer and its general partners and joint venture members are qualified to do business by providing evidence for each such entity that is a corporation, limited liability company, or limited partnership that it is currently in good standing in the state of its respective organization/formation. Such evidence must be in the form of good standing certificates dated no earlier than 90 calendar days before the Proposal Due Date. If not currently registered with the Minnesota Secretary of State, provide a statement that such registration will occur prior to contract approval if the contract is awarded.
 - b) Describe in detail the legal structure of the entity making the Proposal. If Proposer is a partnership or joint venture, attach full names and addresses of all partners or joint ventures and the equity ownership interest of each entity and provide the aforementioned incorporation, formation, and organization information for each general partner or joint venture. If Proposer is a joint venture, attach a letter from each joint venture stating that the joint venture agrees to be held jointly and severally liable for any and all of the duties and obligations of Proposer under the Proposal and under any contract arising there from. If Proposer is a limited liability entity, attach full names and addresses of all equity holders and other financially responsible entities and the equity ownership interest of each entity. Attach evidence to the Proposal and to each letter that the person signing has authority to do so.
 - c) With respect to authorization of execution and delivery of the Proposal and the Contract, if any signature is provided pursuant to a power of attorney, provide a copy of the power of attorney as well as a certified copy of corporate or other appropriate resolutions authorizing said power of attorney. If Proposer is a corporation, provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Proposer is a limited liability company, such evidence must be in the form of a limited liability company resolution and a managing member resolution providing such authorization, certified by an appropriate officer of the managing member. If Proposer is a partnership or a joint venture, such evidence must be provided for the governing body of Proposer and for the governing bodies of each of its general partners/joint venture members, at all tiers, and in all cases certified by an appropriate officer.

- d) Provide Form 1 (Information about Proposer Organization).
- e) Provide Form 2 (Responsible Proposer and Major Participant Questionnaire).
- f) Provide Form 3 (Conflict of Interest Disclosure Statement) for Proposer and each Major Participant.
- g) Provide Form 4 (State of Minnesota – Work Force Certification)
- h) Provide Form 5 (State of Minnesota - Affidavit of Non-Collusion)
- i) Provide Form 6 (Equal Pay Certificate)
- j) Provide Form 7 (Certification Regarding Lobbying)

4.4.5.2 Acknowledgement of Clarifications and Addenda

The Proposer must identify in Appendix D all clarifications and addenda received by number and date.

4.4.5.3 Bonding Capability

The Proposer must provide a letter from a surety or insurance company stating that the Submitter is capable of obtaining a performance bond and payment bond covering the Project in the amount of at least \$85 million. Letters indicating “unlimited” bonding capability are not acceptable. The surety or insurance company providing such letter must be authorized to do business in the State of Minnesota with an A.M. Best Co. "Best's Rating" of A- or better and Class VIII or better.

4.5 DISQUALIFICATION

Any Proposal that is not timely delivered will not be considered. Proposer will be entirely responsible for any consequences, including disqualification of the Proposal that result from Proposer’s failure to follow the instructions in the RFP. It is Proposer’s sole responsibility to see that its Proposal is received as required. Failure to respond or to provide requested information may result in a determination by MnDOT, in its sole discretion, that a Proposal is non-responsive.

5 EVALUATION PROCESS

5.1 GENERAL

The following section describes the process that MnDOT will follow when evaluating Proposals.

5.2 PROPOSAL OPENINGS

Proposals will be opened promptly after the Proposal Due Date.

5.3 RESPONSIVENESS AND PASS/FAIL REVIEW

5.3.1 Proposal Responsiveness Evaluation

MnDOT will conduct an initial review of the Proposals for responsiveness to the requirements set forth in the RFP. A Proposal will be deemed non-responsive if:

- The Proposal does not receive a “pass” rating on the criteria set forth in Section 5.3.2.

MnDOT, in its sole discretion, reserves the right to seek clarification/supporting documentation from Proposers at any time during the Proposal review process and to waive minor irregularities in a Proposal.

If a Proposal is deemed non-responsive, the Proposer will be so advised in writing by MnDOT. This initial review of responsiveness does not preclude a later finding of non-responsiveness by the Technical Review Committee.

5.3.2 Pass/Fail Criteria Evaluation

Proposals will be evaluated based on the following pass/fail criteria:

- An individual or a CMGC firm identified in the Proposal must not have changed since submission of the Proposal, or Proposer must have previously advised MnDOT of a change and received the Commissioner’s prior written approval thereto.
- Proposer information, certifications, and documents as listed in Section 4.4 are included in the Proposal and are complete, accurate, and responsive.
- The Proposal contains no major defect in MnDOT’s sole discretion that would significantly violate an RFP requirement.
- The Proposer has not placed conditions on the Proposal.

A Proposal must receive a “pass” on all “pass/fail” criteria listed in the RFP for the Proposal to be further evaluated. Failure to achieve a “pass” rating on a “pass/fail” factor will result in the Proposal being declared non-responsive and Proposer being disqualified. Failure to submit information in the manner, format, and detail specified may result in the Proposal receiving a “fail” rating and being declared non-responsive. MnDOT will in its sole discretion determine the pass or fail designation of the criteria specified in this RFP.

5.4 EVALUATION OF PROPOSALS

Once a Proposal has been determined to meet the minimum Pass/Fail criteria, MnDOT will evaluate the Proposal relative to the Project Goals as described in [Section 1.6](#) and factors set forth in [Section 4.4.4](#) to determine the total Proposal score. A maximum of 100 points is possible for the Proposal.

The evaluation score for [Section 4.4.4](#) will be determined as follows:

- The MnDOT Technical Review Committee will review each Proposal identifying significant and minor strengths and weaknesses of the Proposer. This review may also include a comparative analysis of all Proposals received.
- Determination of Strengths and Weaknesses will be made at the sole discretion of Technical Review Committee members. The Technical Review Committee members may be advised on strengths and weaknesses by one or more subcommittees or advisors. Strengths and weaknesses are considered on their own merits when determining an adjectival rating and point score and do not “offset” each other. Strengths and weaknesses are generally defined as follows:
 - Strengths – That part of the Proposal which ultimately represents a clear benefit, advantage or value added to the Project and is expected to increase the Proposer’s ability to meet or exceed the Project Goals. A minor strength has a slight positive influence on the Proposer’s ability to meet or exceed the Project Goals, while a significant strength results when a Proposer clearly demonstrates a benefit, advantage or value added that has a considerable positive influence on the Proposer’s ability to meet or exceed the Project Goals.
 - Weaknesses – That part of the Proposal which detracts from the Proposer’s ability to meet the Project Goals or may result in an inefficient or ineffective performance. A minor weakness has a slight negative influence on the Proposer’s ability to meet the Project Goals, while a significant weakness has a considerable negative influence on the Proposer’s ability to meet the Project Goals.

Based on the identified strengths and weaknesses, the Technical Review Committee will select an objective rating and select a percent of maximum score in the identified range.

The following rating system will be used in determining the value for each Scoring Element of the Proposal:

- **Excellent (91-100% of points possible):** The Proposer demonstrates a complete understanding of the subject and approaches it with unique, innovative and/or well-proven methods. The Proposer communicates an outstanding level of quality. The Proposer’s qualifications for the subject are exceptional. The Proposer demonstrates through verifiable sources past relevant experience for personnel assigned to the Project with respect to their proposed roles. In an exceptional rating, there are clear advantages, benefits or value added to the proposed approach. In determining this rating, the Technical Review Committee may also take into account other relevant factors including, but not limited to, engineering merit of the proposed approach, innovation or lack thereof, approach to quality and timeliness of delivery, and record of past performance (“past performance” will not be negatively affected by the assertion of legal rights). This rating may also

involve a comparative analysis of all proposed submitted.

- **Very Good (76-90%):** The Proposer demonstrates a good understanding of the subject and an approach that meets the stated requirements and objectives of this Project. The Proposer communicates a high level of quality. The Proposer’s qualifications are above average. The Proposer demonstrates through verifiable sources past relevant experience for personnel assigned to the Project with respect to their proposed roles at an above-average rating. There are few to no identified weaknesses or deficiencies for the subject. There are perceived advantages, benefits or value added to the proposed approach. In determining this rating, the Technical Review Committee may also take into account other relevant factors including, but not limited to, engineering merit of the proposed approach, innovation or lack thereof, approach to quality and timeliness of delivery, and record of past performance (“past performance” will not be negatively affected by the assertion of legal rights). This rating may also involve a comparative analysis of all proposed submitted
- **Good (51-75% of points possible):** The Proposer demonstrates a general understanding of the subject and an approach containing some weaknesses/deficiencies regarding the stated requirements and objectives of this Project. The Proposer communicates an average level of quality. The Proposer’s qualifications are adequate. Verifiable sources provide an acceptable rating. There is more perceived advantage, benefit or value added than perceived weakness or deficiencies. In determining this rating, the Technical Review Committee may also take into account other relevant factors including, but not limited to, engineering merit of the proposed approach, innovation or lack thereof, approach to quality and timeliness of delivery, and record of past performance (“past performance” will not be negatively affected by the assertion of legal rights). This rating may also involve a comparative analysis of all proposed submitted
- **Fair (21-50% of points possible):** The Proposer demonstrates a vague understanding of the subject and an approach containing significant weaknesses/deficiencies regarding the stated requirements and objectives of the Project. The Proposer communicates a below-average level of quality. The Proposer’s qualifications raise questions about the Proposer’s ability to successfully complete the Project. Verifiable sources provide a neutral to unfavorable rating. In determining this rating, the Technical Review Committee may also take into account other relevant factors including, but not limited to, engineering merit of the proposed approach, innovation or lack thereof, approach to quality and timeliness of delivery, and record of past performance (“past performance” will not be negatively affected by the assertion of legal rights). This rating may also involve a comparative analysis of all proposed submitted
- **Poor (0-20% of points possible):** The Proposer demonstrates insufficient understanding of the subject and an approach that fails to meet the stated requirements and objectives of the Project. The Proposer communicates a low level of quality. The Proposer’s qualifications do not indicate the likelihood that the work will be completed successfully. Verifiable sources provide an unfavorable rating. In determining this rating, the Technical Review Committee may also take into account other relevant factors including, but not limited to, engineering merit of the proposed approach, innovation or lack thereof, approach to quality and timeliness of delivery, and record of past performance (“past performance” will not be negatively affected by the assertion of legal

rights). This rating may also involve a comparative analysis of all proposed submitted

A score will be calculated for the Proposal by multiplying the percentage of maximum score by the points available.

MnDOT, in its sole discretion, reserves the right to conduct an independent investigation of any information, including prior experience, identified in the Proposal by contacting project references, assessing public information, contacting independent parties or other means. MnDOT further reserves the right to request additional information from a Proposer during the evaluation of the Proposal.

5.5 FINAL SCORE AND SELECTION

The apparent successful CMGC Contractor will be the Proposer with the highest total Proposal score (100 possible points). Either the Commissioner or a specifically designated representative will notify the successful Proposer and the unsuccessful Proposers.

6 CONTRACT EXECUTION AND APPROVAL

6.1 PRECONSTRUCTION SERVICES NEGOTIATIONS

Within 5 business days of notification of selection, the apparent successful Proposer will meet with MnDOT's Project Manager to discuss the scope of work for the preconstruction services. The apparent successful Proposer will prepare a cost proposal for preconstruction services and submit it to MnDOT's Project Manager within 5 business days of this initial meeting. The scope of work for preconstruction services will be based on the preconstruction tasks outlined in Exhibit 2 but may be adjusted by MnDOT's Project Manager as needed. The cost of the Professional/Technical (P/T) Services Contract will be based on negotiated fixed-hourly rates for key personnel and support staff that will participate on the Project. Terms of the cost proposal as stated must be valid for the length of the project. The successful Proposer must include a total project cost, along with the following:

- A breakout of the hours by task for each employee.
- Identification of anticipated direct expenses.
- Identification of any assumptions made while developing this cost proposal.
- Identification of any cost information related to additional services or tasks. This should be included in the cost proposal, but clearly identify it as additional costs and not made part of the total project cost.

MnDOT does not make regular payments on Professional/Technical Services Contracts based upon the passage of time; MnDOT only pays for services performed or work delivered after it is accomplished.

A copy of a sample State of Minnesota Professional/Technical Services Contract is available for reference on MnDOT's Consultant Services website: <http://www.dot.state.mn.us/consult/>. Much of the language reflected in the Contract is required by statute. If there are exceptions to any of the terms, conditions or language in the Contract, the successful Proposer must negotiate those exceptions with MnDOT prior to submitting a cost proposal, and MnDOT makes no guarantee that exceptions will be approved.

Travel Reimbursements

Reimbursements for travel and subsistence expenses actually and necessarily incurred by the successful Proposer, as a result of the Contract, will not exceed the amounts provided in the current MnDOT Travel Regulations. Reimbursements will not be allowed for travel and subsistence expenses incurred outside of Minnesota, unless the successful Proposer has received MnDOT's written approval for out-of-state travel. Minnesota will be considered the home base for determining whether travel is out-of-state.

6.2 CMGC CONSTRUCTION SERVICES FEE

The CMGC construction services fee consists of the CMGC Contractor's profit plus the portion of home office overhead (G&A: General and Administrative Costs) allocated to the project, where home office overhead (G&A) is defined as the cost of activities that are necessary to the overall operation of the CMGC Contractor's business allocated to all of the CMGC Contractor's ongoing projects, including insurance that is maintained by the CMGC Contractor as a general cost of doing business. This fee is represented as a fixed-markup percentage that is applied to the construction cost and becomes a part of the CMGC Contractor's price proposal for the construction of this project. **MnDOT has established a construction services fee, represented**

as a fixed-markup percentage, which is 11.5 percent for this project. By submitting a response to this RFP, the Proposer implies acceptance of these terms. Any Proposal that places conditions to these terms or to MnDOT’s established Construction Services Fee percentage will be considered non-responsive.

The Construction Services Fee will exclude all costs for any field indirect costs or direct costs of the Project. Explanation and definitions of home office overhead (G&A), field indirect costs, and direct construction costs are clarified in Exhibit 3 to this RFP.

6.3 P/T SERVICES CONTRACT EXECUTION

Once MnDOT and the apparent successful Proposer have agreed upon the scope of work and cost for the preconstruction services, a P/T services contract is executed. MnDOT’s Consultant Services will provide the Professional/Technical (P/T) Services Contract to the apparent successful Proposer. Within 7 calendar days of receipt of the Contract from MnDOT, the apparent successful Proposer must fully execute and return to MnDOT the Contract with all other required documents described below:

- Executed Contract;
- Evidence of authorization to execute the Contract, in the form of a certified resolution of the governing body of Proposer expressly stating such body’s authorization to execute the Contract and, if Proposer is a partnership, joint venture, unincorporated association, or limited liability company, of the governing bodies of the entity’s partners or members;
- Human Rights Certificate;

MnDOT reserves the right to cancel the Contract approval process at any time before the execution of the Contract by all parties without any liability against MnDOT or the State of Minnesota.

6.3.1 Availability of Key Personnel

Execution of a P/T Services Contract will be contingent on availability of the key personnel listed in the SOQ/Proposal.

6.3.2 Insurance Requirements for Professional/Technical Services Contract

The successful Proposer must provide a certificate of insurance showing that they have each type of insurance coverage and limits required herein. The certificate must be filed with MnDOT’s Authorized Representative within 30 calendar days of execution of the contract, and prior to commencing work under the contract. The successful responder must maintain such insurance in full force and effect throughout the term of the contract.

Required Insurance. The successful Proposer will be required to maintain and furnish satisfactory evidence of the following insurance policies:

- a. **Workers’ Compensation Insurance:** Except as provided below, the successful responder will be required to provide Workers’ Compensation insurance for all its employees and, in case any work is subcontracted, will require its subcontractor(s) to provide Workers’ Compensation insurance in accordance with the statutory requirements of the state of Minnesota, including Coverage B, Employer’s Liability. Insurance **minimum** limits are as follows:

- \$100,000.00 – Bodily Injury by Disease per employee
- \$500,000.00 – Bodily Injury by Disease aggregate
- \$100,000.00 – Bodily Injury by Accident

If Minnesota Statutes §176.041 exempts the successful responder from Workers’ Compensation insurance requirements, or if such responder has no employees in the state of Minnesota, the successful responder will be required to provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes the successful responder from the Minnesota Workers’ Compensation requirements. If, during the course of the contract, the successful responder becomes subject to the Workers’ Compensation Insurance requirements, the successful responder then must comply with such requirements and must provide MnDOT with a Certificate of Insurance evidencing such coverage.

- b. **Commercial General Liability Insurance:** The successful Proposer will be required to maintain insurance protecting the successful responder from claims for damages for bodily injury, including sickness or disease, death and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the contract whether the operations are by the successful responder or by a subcontractor or by anyone directly or indirectly employed by the successful Proposer pursuant to the contract. Insurance minimum limits are as follows:

- \$2,000,000.00 – per occurrence
- \$2,000,000.00 – annual aggregate
- \$2,000,000.00 – annual aggregate – Products/Completed Operations

The following coverages must be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- State of Minnesota named as an Additional Insured, to the extent permitted by law

- c. **Commercial Automobile Liability Insurance:** The successful Proposer will be required to maintain insurance protecting the successful responder from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under the contract, and in case any work is subcontracted the successful responder must require the subcontractor to provide Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

- \$2,000,000.00 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages must be included:

- Owned, Hired and Non-owned Automobile

d. Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance.

The successful responder will be required provide coverage for all claims the successful responder may become legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to the successful responder’s professional services performed under the contract. Unless otherwise specified within this RFP, the successful responder will be required to carry the following **minimum** limits:

- \$2,000,000.00 – per claim
- \$2,000,000.00 – annual aggregate

Any deductible will be the sole responsibility of the successful responder and may not exceed \$50,000.00 with the written approval of MnDOT. If the successful responder desires authority from MnDOT to have a deductible in a higher amount, the successful responder will be required to make such request in writing, specifying the amount of the desired deductible and providing financial documentation, acceptable to MnDOT, so that MnDOT can ascertain the ability of the successful responder to cover the deductible from its own resources. MnDOT will treat such financial statements as non-public data to the extent permitted by the Minnesota Government Data Practices Act.

The retroactive or prior acts date of coverage must not be after the effective date of the contract and the successful responder must maintain such coverage for a period of at least three years following the completion of work. If such insurance is discontinued, then extended reporting period coverage must be obtained by the successful responder to fulfill this requirement.

e. Additional Insurance Conditions:

- The successful Proposer’s policy(ies) will be primary insurance to any other valid and collectible insurance available to MnDOT with respect to any claim arising out of the successful responder performance under this contract;
- If the successful responder receives a cancellation notice from an insurance carrier affording coverage herein, the successful responder agrees to notify the state of Minnesota within five business days with a copy of the cancellation notice, unless the successful responder’s policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least 30 calendar days advance written notice to the state of Minnesota.
- The successful responder is responsible for payment of contract related insurance premiums and deductibles;
- If the successful responder is self-insured, a Certificate of Self-Insurance must be provided to MnDOT;
- The successful responder’s policy(ies) must include legal defense fees in addition to its liability policy limits, with the exception of part d above;
- The successful responder must obtain insurance policies from insurance companies having an “AM BEST” rating of “A minus”, a Financial Size Category VII, or better, and authorized to do business in the state of Minnesota.
- An Umbrella or Excess Liability insurance policy may be used to supplement the successful responder’s policy limits to satisfy the full policy limits required by the contract.

6.3.3 Pre-Award Audit Requirement

The successful Proposer will be required to submit pre-award audit information and comply with audit standards. Failure to do so may result in disqualification. The minimum amount of information that the Audit Office must have for pre-award audit evaluations of a Contractor, and any subcontractors performing preconstruction services in excess of \$10,000, is as follows:

1. Pre-Award Questionnaire - A brief set of questions regarding the most current company information.
2. The most recent financial statements
3. Sample of a Timesheet
4. Sample of an Expense Report
5. Fee Schedule and/or a Billing Rate Schedule, if applicable.
6. Most recent Fiscal Years Overhead Rate Development workpapers in compliance with FAR Part 31. We have created a list of Common unallowable costs for your reference.
7. Certification of Final Indirect Cost (Overhead) Rate
8. If applicable, Cognizant and/or Acceptance letters from other State DOT's regarding the most current fiscal years overhead rate.

More information regarding pre-award audit requirements can be found on MnDOT's Consultant Services website, under Pre-Award Audit Guidance" at: <http://www.dot.state.mn.us/consult/internalresources.html>

6.4 DEBRIEFING

Within 60 calendar days after execution and delivery of the P/T Services Contract, MnDOT will be available for an oral debriefing session upon written request made to the MnDOT CMGC Program Manager by an authorized representative of an unsuccessful Proposer. MnDOT reserves the right to delay indefinitely and/or cancel the debriefing meetings in its sole discretion.

At a minimum, the debriefing information must include MnDOT's evaluation of the significant weaknesses or deficiencies in Proposer's Proposal, if applicable.

The debriefing must not include point-by-point comparisons of the debriefed Proposer's Proposal with those of the other Proposers. Moreover, the debriefing must not reveal any information that MnDOT cannot lawfully release or disclose at such time under the Minnesota Government Data Practices Act.

The purpose of a debriefing meeting is for MnDOT to provide informal and objective comments to a Proposer on MnDOT's review of their Proposal and provide feedback that may help Proposers improve their Proposals for future procurements. A debriefing meeting also provides an informal setting to discuss this RFP and the procurement process; however, the Proposer should not use the debriefing meeting as a forum in which to address issues raised in any Protest under Section 3.9. If a Proposer has filed a protest under Section 3.9, and the Proposer also requests a debriefing meeting, the debriefing meeting will be scheduled to occur after MnDOT has issued a final agency decision regarding the merits of the Protest as provided in Section 3.9.

6.5 STIPENDS

MnDOT will not provide compensation to the Proposer for any expenses incurred for the Proposal preparation. Refer to Section 3.8 for further clarification.

EXHIBIT 1 - CMGC INTRODUCTION

Construction Manager/General Contractor (CMGC) is a contracting method that involves MnDOT executing a Professional/Technical (P/T) services contract with a construction firm (CMGC Contractor) to provide, among other services, input regarding constructability, risk, cost, and schedule during the preconstruction phase of a project. During this preconstruction phase, the CMGC Contractor performs a “Construction Manager” role, serving as an advisor to MnDOT and MnDOT’s Designer. Once the preconstruction phase of the Project reaches the appropriate stage, the CMGC Contractor is given an opportunity to provide a proposed cost (“price proposal”) to construct the Project. MnDOT then evaluates the acceptability of the CMGC Contractor’s price proposal using both an independent cost estimate and MnDOT engineer’s estimate. If the CMGC Contractor’s price proposal is acceptable to MnDOT, the CMGC Contractor becomes the General Contractor responsible for constructing the Project.

If MnDOT and the CMGC Contractor fail to reach agreement on price, MnDOT has the option to terminate the CMGC Professional/Technical services contract without penalty or payment (except payment for pre-construction services) and procure the construction of the Project by some other method. If there are multiple work packages (i.e., construction contracts) on a project, the CMGC Contractor will be allowed to continue to perform construction services for previously awarded work packages, but MnDOT will procure future work packages by another procurement method.

The intent of the CMGC process is to form a partnership with MnDOT, the Design Engineer, and the CMGC Contractor. The goals of this partnership are to mitigate risk, optimize the schedule, streamline the design process, improve overall quality, and develop a project that adheres to the budget. An important role of the CMGC Contractor in this process is to evaluate the constructability of the design concepts to reduce risks and costs in all phases with innovative approaches to meet the project goals, including the budget. The CMGC Contractor’s involvement is expected to improve the overall constructability of the Project and help minimize design elements that unnecessarily increase cost.

EXHIBIT 2 – CMGC SCOPE OF WORK

6.5.1 Scope of Work (Pre-Construction Services)

The CMGC Contractor must consult with the Project Team during the design phase in order to develop, implement and maintain a spirit of cooperation and open communication among the parties so that the goals and objectives of each party are clearly understood, potential problems are resolved promptly, and upon completion, the Project is deemed a success by all.

As part of the design team, the CMGC Contractor will provide input on schedule, phasing, constructability, materials availability, cost, etc., throughout the design phase of the Project. The use of subcontractors or design consultants to supplement the CMGC Contractor's staff is allowable to provide the necessary expertise for the preconstruction services described herein.

The following is a more detailed list of the CMGC Contractor's tasks during the design phase:

- 1) Provide a Project Manager and associated staff to consult with, advise, assist, and provide recommendations to MnDOT and the design team on all aspects of the planning, design, and proposed construction, as requested by MnDOT.
- 2) Attend an initial Project Kickoff Meeting that includes the following agenda items: introduction to the project team and project stakeholders, project status update, and question and answer session.
- 3) Participate in quarterly partnering workshops.
- 4) Provide technical assistance during the preliminary design phase (prior to 30% design) as design alternatives are evaluated. The technical assistance will include providing risk assessments, constructability reviews (including construction access, laydown areas, staging/maintenance of traffic), construction cost estimates, and construction schedules for design alternatives being evaluated. The CM/GC Contractor's evaluation of design alternatives will include, at a minimum, various bridge types (e.g. steel plate girder and through girder) and retaining wall types (e.g. soil nail, soil pile and lagging, tangent/secant, cast-in-place) and the associated civil/grading work for both the permanent and temporary construction. Design alternatives will potentially also include various shoofly alignments.
- 5) Participate in design coordination meetings with Project team including consultants, District Four Project Team and MnDOT specialty offices. It is anticipated that design coordination meetings will be held virtually on a bi-weekly basis.
- 6) Participate in the interim pricing milestone process, anticipated to occur at the 30%, 60%, and 90% design submissions. This includes the following at each milestone:
 - i) Participating in formal workshops (e.g., estimate coordination, design review, risk);
 - ii) Preparing a cost estimate and schedule. The schedule at the 90% design milestone will be cost and resource loaded.
 - iii) Reconciling price differences.

See MnDOT’s Interim Pricing Milestone process for more information regarding the process and the services provided by the CMGC Contractor.

- 7) Provide a price progression log that clearly documents the basis for changes to the contractor’s cost estimates between the 30%, 60% and 90% designs and the price proposal. This includes identifying and quantifying pricing changes and changes to the scope of work that contribute to any overall change in the project’s construction cost between each design milestone and the price proposal.
- 8) Review the 30%, 60%, and 90% design plans and provide comments regarding constructability, cost, schedule, and staging.
- 9) Continually review and provide input to the Project Team on various elements of the Project such as staging, sequencing, access, equipment storage, traffic management, storm water management, accelerated bridge construction techniques, and materials.
- 10) Recommend any early work packages, such as procurement of long-lead time materials, which optimize the Project schedule and/or reduce cost.
- 11) Develop, with input from MnDOT, a Subcontracting Plan to integrate subcontractors as needed to accomplish all construction work. Identify the proposed plan to meet contract goals (e.g. DBE) established by MnDOT’s Office of Civil Rights for the Project.
- 12) Develop conceptual plans to assist MnDOT with maintenance of traffic and local access during construction.
- 13) Develop conceptual plans for the CMGC Contractor’s proposed means and methods and temporary works such as site access, laydown areas, debris containment, de-watering, drainage, water treatment, complex forming systems, protecting environmentally sensitive areas, deck placement and relocating/maintaining/supporting utilities.
- 14) Assist MnDOT with certain project development tasks such as railroad coordination, permits, agreements, and right-of-way acquisition. Example tasks include providing MnDOT, BNSF, and applicable regulatory agencies with relevant construction details, such as staging, access/laydown areas, means and methods/temporary works. This also includes providing construction schedules and cost estimates for project elements and/or design alternatives being evaluated and assisting with the development of the Storm Water Pollution Prevention Plan (SWPPP), as applicable, to meet local jurisdictional requirements.
- 15) Document and track cost and schedule savings measures introduced by the Project Team through the design development and provide this to MnDOT.
- 16) Coordinate with Project stakeholders in conjunction with MnDOT and the Design Engineer. This includes assisting MnDOT with public outreach and communication efforts where matters related to the Project’s construction are discussed and/or presented.

6.5.2 Co-Location Requirements

Co-location is not anticipated for this project; however, the CMGC Contractor’s Key Personnel will be expected to attend multi-day (2-3 days) workshops with the project team. These workshops are expected to take place at the MnDOT District 4 Building in Detroit Lakes at key design milestones (30%, 60%, and 90% designs). Other meetings will be required and can be facilitated by using teleconferences and/or

Teams.

6.5.3 Scope of Work (Price Proposal Validation Process)

When MnDOT and the CMGC Contractor agree that the Project has been designed to a sufficient level of detail to allow for a constructible and ‘biddable’ Project or work package, the CMGC Contractor will be given an opportunity to provide a price proposal to MnDOT to construct the Project. The price proposal required on this project will be based on a unit price payment structure typical of MnDOT design-bid-build contracts. The CMGC Contractor’s price proposal may include provisional sums that have been established to pay for risk that is realized during the construction phase. Furthermore, contingency may be established to pay for risk that is not included in the CMGC Contractor’s price proposal. MnDOT will not request a price proposal from the CMGC Contractor until the environmental review process has been completed. When preparing to submit a price proposal for the work, the CMGC Contractor will be required to perform the following tasks:

- 1) Participate in a workshop to review and provide final input on the plans and specifications before MnDOT solicits a price proposal from the CMGC Contractor.
- 2) Submit a final cost model to MnDOT that documents the means, methods, assumptions, and risks that are used to price the Project or work package.
- 3) Prepare and submit a price proposal (utilizing MnDOT’s Electronic Bid System) to MnDOT for the Project or work package in accordance with MnDOT’s Price Proposal Validation Process.
- 4) Submit with the price proposal a detailed baseline cost and resource loaded CPM Schedule to serve as the Project Baseline Schedule, which identifies all activities during construction. The schedule must clearly identify milestones, showing the proposed start and finish dates and include a narrative that clearly describes the assumptions that were used to derive item prices (e.g., crew sizes, production rates, and other requirements outlined in Standard Specification 1803).
- 5) MnDOT will review the CMGC Contractor’s price proposal in accordance with MnDOT’s Price Proposal Validation Process.
 1. If MnDOT and the CMGC Contractor reach an acceptable price proposal, MnDOT will proceed with awarding and approving the contract based on the CMGC Contractor’s price proposal.
 2. If the CMGC Contractor and MnDOT are ultimately unable to reach an acceptable price proposal, MnDOT will terminate the CMGC Contractor’s professional/technical services contract without penalty or payment (except payment for pre-construction services) and procure the construction of the Project by some other method. If there are multiple work packages on a project, the CMGC contractor will be allowed to continue to perform construction services for previously awarded work packages, but MnDOT will procure future work packages by another procurement method.
- 6) The price proposal will not be exceeded except as allowed for quantity over-runs, under runs or changed conditions as defined in the MnDOT Standard Specifications. However, when

considering additional compensation for changed conditions, MnDOT will consider the fact that the CMGC Contractor participated in the design effort during the Preconstruction phase.

Awarding Contracts for Severable Work Packages: If MnDOT elects to progress this project using severable work packages, MnDOT may require the CMGC Contractor to submit an Opinion of Probable Construction Cost (OPCC) for the entire project prior to awarding a contract for a severable work package. The OPCC for the entire project is used by MnDOT to confirm that the overall construction scope can be completed within the available project budget. The OPCC for the entire project is based on the assumptions and risks that are known at the time the OPCC is submitted to MnDOT. When the CMGC Contractor submits an OPCC for the entire project, MnDOT assumes that the CMGC Contractor intends to construct the overall project at or below the OPCC, subject to documentable changes in bidding assumptions or scope that affects pricing.

6.5.4 Scope of Work (Construction Services)

If the CMGC Contractor and MnDOT are able to reach an acceptable price proposal and the CMGC Contractor complies with requirements/goals (e.g. DBE, EEO) established by MnDOT’s Office of Civil Rights and all other conditions of award, the CMGC Contractor must:

- Execute a contract with MnDOT.
- Construct and manage all construction related contracts while meeting all Project requirements and Federal Contract requirements, as per the plans and specifications.
- Substantially complete the construction no later than listed in the contract.

EXHIBIT 3 – CMGC CONSTRUCTION SERVICES FEE AND OVERHEAD DEFINITIONS

Construction Services Fee

The CMGC construction services fee consists of the CMGC Contractor's profit plus the portion of home office overhead (G&A: General and Administrative Costs) allocated to the project, where home office overhead (G&A) is defined as the cost of activities that are necessary to the overall operation of the CMGC Contractor's business allocated to all of the CMGC Contractor's ongoing projects, including insurance that is maintained by the CMGC Contractor as a general cost of doing business. This fee is represented as a fixed-markup percentage that is applied to the construction cost and becomes a part of the CMGC Contractor's price proposal for the construction of this project.

The Construction Services Fee includes any bonuses and incentives but excludes all field indirect costs and costs associated with direct Project construction activities, including but not limited to risk or contingency. See below in this Exhibit for further clarification regarding project costs (direct and field indirect) that are not included in the construction services fee represented as a fixed-markup percentage.

Field Indirect Costs (General Conditions of Work)

The list below states the categories of field indirect costs that are acceptable to MnDOT and must be included in the Cost of the Work, and not included as part of the CMGC Construction Services Fee submitted by the CMGC Contractor.

- Job Supervision and Overhead: Wages including benefits, payroll insurance and taxes for onsite management, supervision, engineers, safety personnel, quality control staff, and administration staff.
- Survey: Cost of construction survey including both CMGC Contractor-hired and outside service.
- Site Office Expense: Ownership or rental of building, maintenance, removal, utilities, office and engineering expendables, furniture, computers and infrastructure, photographs.
- Insurance and Taxes: Insurance other than that based on payroll, such as railroad protective, equipment insurance, and other specified or CMGC Contractor-required insurances. Taxes excluding payroll taxes such as property tax and any special local or State. Sales tax should be included with the applicable item taxed.
- Temporary Buildings: Cost of ownership or rental, set up, maintenance and removal of such buildings as owner's office (if not a direct pay item), warehouses, first aid building, and other miscellaneous.
- Personnel Expense: Small tools and supplies, safety expendables, drug screen testing, training, physicals, and hiring expense. Include any per-diem costs for craft or indirect personnel.
- Project Utilities: Site utilities such as temporary electric, water, and sanitary.

- **Mobile Equipment:** Overhead vehicles, maintenance equipment and personnel (if not in Equipment Operating Expense), and general service equipment and personnel (such as flatbeds and forklifts if not in direct cost).
- **Mobilization:** Cost of transportation of equipment and other items for move in, move out, set up, and take down. Include cost of personnel moves and related expense.
- **Construction Plant:** Include site fences, parking areas, material yards, temporary access, and other such special construction not included in direct costs. Haul road construction and maintenance to be included in direct costs.
- **Quality Control:** Cost of QC labor, equipment, and supplies and outside services and CMGC Contractor-hired personnel with site overhead wages.
- **Bonds:** Include cost of payment and performance bond or other guaranties as specified or allowed. Cost of subcontract or material bond must also be included here.
- **Escalation:** Estimated cost of Items for which firm pricing cannot be obtained. Includes increases in craft and field indirect wage rates and fringe benefits whether by agreement or estimated.

When pricing the work for OPCCs, field indirect costs will be broken out separately. Prior to submitting the price proposal (typically at the 90% OPCC) field indirect costs will be allocated accordingly to the contract pay items.

Allowable Construction Costs for Direct and Field Indirect Costs

Definitions of some of the items of direct and field indirect costs are set forth below and must not be included in the CMGC Construction Services Fee submitted by the CMGC Contractor:

- **Labor:** Includes wages and add-ons including overtime, vacation pay, and all fringe payments such as health and welfare, pensions, and any other that may be included in union agreement or as paid to both craft and staff employees. Payroll insurance including Worker's Compensation and General Liability if based on labor amounts. Payroll taxes including FICA and State and Federal unemployment.
- **Permanent Materials:** Includes the cost of materials incorporated into the Work. To include estimated loss, waste, and non-pay overruns. Sales tax and any shipping for these materials will be a part of this category.
- **Construction Expendable Materials:** Includes non-permanent materials, temporary facilities, small tools, formwork, temporary construction, office supplies, services, insurance, and taxes.
- **Equipment Ownership:** Includes rental or ownership charge of both company-owned and outside rentals and sales tax on any rentals.

- Equipment Operating Expense: Includes repair parts, tires and tracks, CMGC Contractor's repair labor, services and fuel, oil and grease.
- Subcontract: Cost of Items of work subcontracted including contracted trucking.

ATTACHMENT 1

PROMPT PAYMENT

December 2002

NOTICE TO ALL BIDDERS

Minnesota Statutes that require prompt payment to subcontractors:

16A.1245 Prompt payment to subcontractors.

Each state agency contract must require the prime contractor to pay any subcontractor within ten days of the prime contractor's receipt of payment from the state for undisputed services provided by the subcontractor. The contract must require the prime contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor must pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

HIST: 1990 c 541

337.10 Building and construction contracts; prohibited provisions.

Subd. 3. Prompt payment to subcontractors. A building and construction contract must be deemed to require the prime contractor and all subcontractors to promptly pay any subcontractor or material supplier contract within ten days of receipt by the party responsible for payment of payment for undisputed services provided by the party requesting payment. The contract must be deemed to require the party responsible for payment to pay interest of 1-1/2 percent per month to the party requesting payment on any undisputed amount not paid on time. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the party responsible for payment must pay the actual penalty due to the party requesting payment. A party requesting payment who prevails in a civil action to collect interest penalties from a party responsible for payment must be awarded its costs and disbursements, including attorney fees incurred in bringing the action. This subdivision does not apply to construction of or improvements to residential real estate as defined in section 326.83, subdivision 17, or to construction of or improvements to attached single-family dwellings, if those dwellings are used for residential purposes and have fewer than 13 units per structure.

HIST: 1997 c 127 s 1; 1998 c 289 s 1,2; 1999 c 116 s 2

ATTACHMENT 2

BID RIGGING

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

Form 1

INFORMATION ABOUT PROPOSER ORGANIZATION

1.0 Name of Proposer: _____

2.0 Type of entity: _____

3.0 Proposer's address: _____

Telephone

Facsimile

4.0 How many years has Proposer and each member, partner, or joint venturer of Proposer been in its current line of business?

Proposer: _____

_____: _____

_____: _____

_____: _____

_____: _____

5.0 How many years has Proposer and each member, partner or joint venturer of Proposer been in business under its present name?

Proposer: _____

_____: _____

_____: _____

_____: _____

_____: _____

Form 1

6.0 Under what other or former names has Proposer and each member, partner or joint venturer of Proposer operated?

Proposer: _____
_____: _____
_____: _____
_____: _____
_____: _____

7.0 If Proposer (or any member, partner or joint venturer of Proposer) is a corporation or includes a corporation as a joint venturer, partner or member, answer the following (copy this page if necessary for multiple corporations):

7.1 Name of corporation: _____
7.2 Relationship of corporation to Proposer: _____
7.3 Date of incorporation: _____
7.4 State of incorporation: _____
7.5 President's name: _____
7.6 Vice president's name(s): _____

7.7 Secretary's name: _____
7.8 Treasurer's name: _____

8.0 If Proposer (or any member, partner or joint venturer of Proposer) is a partnership (including general partnerships, limited partnerships and limited liability partnerships) or includes a partnership as a joint venturer, partner or member, answer the following (copy this page if necessary for multiple partnerships):

8.1 Name of partnership: _____
8.2 Relationship of partnership to Proposer: _____
8.3 Date and state of formation of partnership: _____

Form 1

8.4 Full names and addresses of all partners (state whether general or limited partners):

9.0 If Proposer (or any member, partner or joint venturer of Proposer) is a joint venture or includes a joint venture as a joint venturer, partner or member, answer the following (copy this page if necessary for multiple joint ventures):

9.1 Name of venture: _____

9.2 Relationship of venture to Proposer: _____

9.3 Full names and addresses of all members (at all tiers):

10.0 If Proposer (or any member, partner or joint venturer of Proposer) is a limited liability company or includes a limited liability company as a joint venturer, partner or member, answer the following (copy this page if necessary for multiple companies):

10.1 Name of company: _____

10.2 Relationship of company to Proposer: _____

10.3 Date of organization: _____

10.4 State of organization: _____

10.5 President's name: _____

10.6 Vice president's name(s): _____

10.7 Secretary's name: _____

10.8 Treasurer's name: _____

Form 1

11.0 If Proposer (or any member, partner or joint venturer of Proposer) is an individual or an entity other than a corporation, partnership, limited liability company or joint venture, **include copies of organizational documents for all tiers certified by an appropriate individual** and describe such person or entity and name all principals (copy this page if necessary for multiple entities):

12.0 Proposer must review its SOQ previously submitted to MnDOT and list below any new or changed information. If Proposer’s organization has changed since submission of its SOQ, specifically describe such changes, and include a copy of the Commissioner’s approval letter(s) (see RFP Section 1.6). Except as updated by the following information, Proposer’s SOQ is hereby incorporated as if set forth in full and Proposer represents and warrants to MnDOT that the information set forth in the SOQ, except as set forth herein, is true, complete and accurate in all respects and does not contain any misleading or incorrect information. Attach separate sheets if necessary.

13.0 Within the last five years, has Proposer or any member, partner or joint venturer of Proposer ever failed to comply with the requirements of regulatory agency permits? If so, note when, where and why (and specify which entity was involved).

Form 1

14.0 Proposer must identify and describe any pending or active sales, mergers, acquisitions or bankruptcy filings for any member, partner or joint venturer of the Proposer.

Note:

Proposer's partnership agreement, limited liability company agreement and joint venture agreement, as applicable, must include an express provision satisfactory to MnDOT, in its sole discretion, stating that, in the event of a dispute between or among joint venturers, partners or members, as applicable, no joint venturer, partner or member, as applicable, must be entitled to stop, hinder or delay work on the Project.

MnDOT reserves the right to request copies of organizational documents such as articles of incorporation, bylaws, partnership agreements, certificates of partnerships, joint venture agreements, limited liability company operating agreements and others.

STATE OF _____)

)

COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that _____ is the _____ of _____ and is the _____ of _____, which entity(ies) are the _____ of _____, the entity making the foregoing Proposal, and that the answers to the foregoing questions and all other statements therein are true and correct.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

(Company Name)

(Company Name)

Form 2

**RESPONSIBLE PROPOSER AND MAJOR PARTICIPANT
QUESTIONNAIRE**

Proposer Name: _____

1. Questions

Proposer must respond either “yes” or “no” to each of the following questions. If Proposer’s response is “yes” to any question(s), a detailed explanation of the circumstances must be provided in the space following the questions. Proposer must attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection. With respect to Proposer, the term “affiliate” must mean any firm, corporation, partnership, joint venture, limited liability company or association which is a member, joint venturer or partner of Proposer or any such entity which owns a substantial interest in or is owned in common with Proposer or any of its members, joint venturers or partners, or any such entity in which Proposer or any of its members, joint venturers or partners own a substantial interest. With respect to a Major Participant, the term “affiliate” must mean any firm, corporation, partnership, joint venture, limited liability company or association which is a member, joint venturer or partner of the Major Participant or any such entity which owns a substantial interest in or is owned in common with the Major Participant or any of its members, joint venturers or partners, or any such entity in which the Major Participant or any of its members, joint venturers or partners own a substantial interest.

Within the past ten years, has Proposer, any affiliate of Proposer, any officer, director, responsible managing officer or responsible managing employee of proposer who has a proprietary interest in proposer, any Major Participant, any affiliate of the Major Participant, any officer, director, responsible managing officer or responsible managing employee of the Major Participant:

- a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States?

If yes, please explain the circumstances. If no, so state.

Yes __ No __

- b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes __ No __

- c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal

Form 2

antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes __ No __

- d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes __ No __

- e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Minnesota governmental agency to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Minnesota law.

If yes, please explain the circumstances. If no, so state.

Yes __ No __

- f) Been found, adjudicated, or determined by any state court, state administrative agency, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

If yes, please explain the circumstances. If no, so state.

Yes __ No __

- g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes __ No __

Form 2

- h) Been assessed liquidated or other damages, monetary deductions, disincentives or penalties in excess of \$50,000 (aggregate for the contract) for failure to complete any contract or intermediate completion deadline on time?

If yes, please explain the circumstances. If no, so state.

Yes __ No __

- i) Is actively undergoing a merger, acquisition, sale, or bankruptcy filing?

If yes, please explain the circumstances. If no, so state.

Yes __ No __

Explain the circumstances underlying any “yes” answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Minnesota that the foregoing declaration is true, correct and accurate. Executed _____, 20____.

(Signature)

(Name Printed)

(Title)

Form 3

CONFLICT OF INTEREST DISCLOSURE STATEMENT

Proposer's attention is directed to 23 CFR Section 636 Subpart A and in particular to Subsection 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

In addition, MnDOT has developed a policy regarding conflict of interest related to CMGC projects. A copy of this policy is posted on MnDOT's CMGC website: <http://www.dot.state.mn.us/const/tools/const-manager-general-contractor.html>

1. Organizational Conflict of Interest Policy

MnDOT may disqualify Proposer if any of its Major Participants belong to more than one Proposer organization. If any Major Participants of different Proposer organizations belong to the same parent company, each Proposer must describe how the participants have avoided conflicts of interest during the procurement phase of the Project.

The Proposer is prohibited from receiving any advice or discussing any aspect relating to the Project or the procurement of the Project with any person or entity with an organizational conflict of interest, including, but not limited to MnDOT Consultant/Technical Support firms listed in Section 1.2.

Proposer agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to MnDOT that must include a description of the action that Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, MnDOT may, at its discretion, cancel the Contract. If Proposer was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the contracting officer, MnDOT may terminate the Contract for default.

2. Disclosure Pursuant to Section 636.116(2)(v)

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of Proposer's team (including Proposer, Major Participants, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with the RFP.

Proposer must disclose: (a) any current contractual relationships with MnDOT (by identifying the MnDOT contract number, project manager, and project description); (b) present or planned contractual or employment relationships with any current MnDOT employee; (c) conflicts or potential conflicts as described in MnDOT's Design-Build Approach to Conflict Management, and (d) any other circumstances that might be considered to create a financial interest in the contract for the Project by any current MnDOT employee if Proposer is awarded the contract.

Form 3

Proposer must also disclose any current contractual relationships where Proposer is a joint venturer or partner with firms serving in any of the roles noted in MnDOT’s policy regarding conflicts of interest on CMGC projects. The foregoing is provided by way of example, and must not constitute a limitation on the disclosure obligations.

3. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein.

4. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Form 3

Signature

Name

Title

Company Name

Form 4

STATE OF MINNESOTA – WORK FORCE CERTIFICATE INFORMATION

This form is required by state law for all proposals that could exceed \$100,000.00. Complete this form and return it with your proposal. The State of Minnesota is under no obligation to delay proceeding with a contract until a company becomes compliant with the Workforce Certification requirements in Minnesota Statutes §363A.36.

BOX A – MINNESOTA COMPANIES that have employed more than 40 full-time employees within this state on any single working day during the previous 12 months, check one option below:

- Attached is our current Workforce Certificate issued by the Minnesota Department of Human Rights (MDHR).
- Attached is confirmation that MDHR received our application for a Minnesota Workforce Certificate on _____ (date).

BOX B – NON-MINNESOTA COMPANIES that have employed more than 40 full-time employees on a single working day during the previous 12 months in the state where it has its primary place of business, check one option below:

- Attached is our current Workforce Certificate issued by MDHR.
- We certify we are in compliance with federal affirmative action requirements. Upon notification of contract award, you must send your federal or municipal certificate to MDHR at compliance.MDHR@state.mn.us. If you are unable to send either certificate, MDHR may contact you to request evidence of federal compliance. The inability to provide sufficient documentation may prohibit contract execution.

BOX C – EXEMPT COMPANIES that have not employed more than 40 full-time employees on a single working day in any state during the previous 12 months, check option below if applicable:

- We attest that we are exempt. If our company is awarded a contract, we will submit to MDHR within 5 business days after the contract is fully signed, the names of our employees during the previous 12 months, the date of separation, if applicable, and the state in which the persons were employed. Send to compliance.MDHR@state.mn.us.

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of your company.

Name of Company: _____ Date _____

Authorized Signature: _____ Telephone number: _____

Printed Name: _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services

Web: <http://mn.gov/mdhr/>

TC Metro: 651-539-1095

Toll Free: 800-657-3704

Email: compliance.mdhr@state.mn.us

TTY: 651-296-1283

Form 5

AFFIDAVIT OF NON-COLLUSION

Instructions: Please return your completed form as part of your proposal.

I swear (or affirm) under the penalty of perjury:

1. That I am the responder (if the responder is an individual), a partner in the company (if the responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the responder is a corporation);
2. That the attached proposal submitted in response to the TH 10/75 - 11th Street Underpass project, S.P. 7106-87, CMGC RFP has been arrived at by the responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other responder of materials, supplies, equipment or services described in the RFP, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the responder, or its employees or agents, to any person not an employee or agent of the responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Authorized Signature:

Responders Firm Name: _____

Print Authorized Representative Name: _____ Title: _____

Authorized Signature: _____ Date: _____

Notary Public

Subscribed and sworn to before me this:

_____ day of _____, 20____

Notary Public Signature

Commission Expires

Form 6

STATE OF MINNESOTA – EQUAL PAY CERTIFICATE

If your proposal could be in excess of \$500,000, complete and submit this form with your submission. **It is your sole responsibility to provide the information requested and, when necessary, to obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) prior to contract execution. You must supply this document as part of your proposal.** Contact MDHR with questions at 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay), or at compliance.MDHR@state.mn.us.

Option A – If you have employed more than 40 full-time employees on any single working day in one state during the previous 12 months, check the applicable box below:

- Attached is our current MDHR Equal Pay Certificate
- Attached is MDHR’s confirmation of our Equal Pay Certificate application

Option B – If you have not employed more than 40 full-time employees on any single working day in one state during the previous 12 months, check the box below:

- We are exempt. We agree that if we are selected, we will submit to MDHR within five business days of final contract execution, the names of our employees during the previous 12 months, date of separation (if applicable), and the state in which the persons were employed.

Documentation should be sent to: compliance.MDHR@state.mn.us

The State of Minnesota reserves the right to request additional information from you. If you are unable to check any of the preceding boxes, please contact MDHR to avoid the Commissioner taking action to void your contract.

Your signature certifies that you are authorized to make the representations, the information provided is accurate, the State of Minnesota can rely upon the information provided, and the State of Minnesota may take action to suspend or revoke any contract with you for any false information provided.

Authorized Signature	Printed Name	Title
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Organization	MN/FED Tax ID#	Date
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Issuing Entity	Project # or Lease Address
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Form 7

CERTIFICATION REGARDING LOBBYING
For State of Minnesota Contracts and Grants over \$100,000

The undersigned certifies, to the best of his or her knowledge and belief 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 any 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 will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.
3. The undersigned will 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 will 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. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Organization Name

Name and Title of Official Signing for Organization

By: _____
Signature of Official

Date