

NOTICE TO BIDDERS
WORK UNDER THE CONTRACT
June 24, 2016

Pursuant to MnDOT Disadvantaged Business Enterprise (DBE) Special Provisions, Targeted Group Business (TGB) and Veteran-Owned Small Business Special Provisions, Special Provisions Divisions A-Labor, bidders are advised that “work under the contract” for the purposes of performing on a MnDOT contract generally means, “ all construction activities associated with the public works project, including any required hauling activities on the site of, or to or from a public works project and work conducted pursuant to a contract...regardless of whether the construction activity or work is performed by the prime contractor, subcontractor, trucking broker, trucking firms, independent contractor, or employee or agent of any of the foregoing entities, and regardless of which entity or person hire or contracts with another.” *J.D. Donovan, Inc. vs. Minnesota Department of Transportation*, 878 N.W.2d 1 (2016) quoting Minn. R. 5200.1106, subp. 2(A).

Bidders are further advised that pursuant to the Minnesota Supreme Court’s decision in *J.D. Donovan, Inc. vs. Minnesota Department of Transportation*, 878 N.W.2d 1 (2016), “work under the contract” excludes hauling oil offsite in hauling activities **not** to, from, or on the project work site.

For the purposes of the Prevailing Wage Act, a laborer must be “doing or contracting to do all or part of the work under a contract.” Minn. Stat. § 177.44, subd. 1. Therefore, the Prevailing Wage Act does **not** apply to hours worked when hauling oil offsite in hauling activities not to, from, or on the project work site.

For the purposes of the Disadvantaged Business Enterprise (DBE) program, DBE participation is only counted when a DBE participates in a contract. 49 C.F.R. § 26.55. Further, a DBE must perform a commercially useful function to be counted towards the DBE goal. 49 C.F.R. § 26.55(c)(1) defines a commercially useful function as when a DBE “is responsible for the execution of the work of the contract.” Thus, DBE credit must only be counted when hauling oil to, from, or on the site of a public works project.