

00485

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SUBCONTRACTING POLICY AND PROCEDURE**

PART 1 - DBE PROGRAM

1.1 POLICY

The Metropolitan Council recognizes its role as public policy makers in enacting policy that serves to eliminate the effects of illegal discrimination. The Council has previously approved several policies that clearly state its commitment to the prohibition of discrimination in employment and the provision of public services. This policy conveys the Council's commitment to create and support programs that result in the inclusion of minority-owned, women-owned, and other small disadvantaged businesses in its procurement and contracting activities.

The Council will, in accordance with the authority granted by federal regulations and state statute, act affirmatively to create a "level playing field" for minority-owned, woman-owned and other small disadvantaged business enterprises to achieve the goal of equal opportunity.

To help ensure equal opportunity, the Council will utilize small disadvantaged businesses in the procurement of goods and services, and the award of contracts. The Council will set inclusion goals on construction contracts and on contracts for consultant, professional, or technical services that feature subcontract opportunities. Where feasible, the Council will encourage its grant recipients to engage in efforts to solicit and include small disadvantaged businesses and to report to the Council the results of these efforts. The Council will set benchmarks to track and measure its efforts to include small disadvantaged businesses across its divisions.

The Metropolitan Council has adopted this policy pursuant to U.S. Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program and the standards set forth in 49 CFR Part 26.

1.2 DEFINITIONS

Day(s) is defined in Metropolitan Council 00700 General Conditions.

Disadvantaged Business Enterprise (DBE) has the meaning given in 49 C.F.R. 26.5. DBEs are certified by the Minnesota Unified Certification Program.

Minnesota Unified Certification Program (MNUCP) means the group of state and local agencies who work together to certify DBEs (as mandated by USDOT). MNUCP is comprised of the following certifying agencies: City of Minneapolis, Metropolitan Airports Commission, Minnesota Department of Transportation, and Metropolitan Council.

1.3 CONTACT INFORMATION

Questions regarding the DBE Program and these procedures should be directed to the DBE Liaison Officer designee at Office of Equal Opportunity, Metropolitan Council, 390 Robert Street, Saint Paul, Minnesota 55101, or DBE@metc.state.mn.us or (651) 602-1163.

PART 2 – CONTRACT GOAL

2.1 DBE PARTICIPATION GOAL

The DBE participation goal for this contract is ____ % of the total bid amount.

PART 3 - BID SUBMITTAL

3.1 AT TIME OF BID

All bids MUST include a properly completed:

1. **00485 - Disadvantaged Business Enterprise (DBE) Commitment Form** (DBE Commitment Form); and,
2. **00485 - Disadvantaged Business Enterprise (DBE) Letter of Intent** (DBE Letter of Intent Form)
 - a. A Letter of Intent is required at the time of bid from each DBE firm listed on the DBE Commitment Form as being utilized for credit to meet the goal; and,
3. **00485 - Disadvantaged Business Enterprise (DBE) Good Faith Efforts (GFE) Submission Reference** (DBE Good Faith Efforts Form)
 - a. If the DBE Commitment Form indicates the bidder's DBE participation commitment is less than the goal established for this contract, the Bidder must submit Documented Good Faith Efforts at the time of bid that provides information about efforts the bidder took to meet the goal.

Failure to submit a properly completed DBE Commitment Form, DBE Letter(s) of Intent Form, or DBE Good Faith Efforts Form (if applicable) with the bid will be considered nonresponsive and may result in no further consideration.

3.2 DBE COMMITMENT FORM (due at the time of bid)

A DBE Commitment Form is required at the time of bid.

1. Must be completed and signed by Bidder.
2. The Bidder must list all DBE firms, if any, whose participation is proposed to be credited toward meeting the DBE goal and the following information regarding each such firm:

[Project Name]

- a. The name of each DBE sub-contractor that the bidder intends to credit toward the DBE goal;
 - b. A description of the work to be performed or materials to be supplied by each DBE;
 - c. The DBE bid amount;
 - d. A description of how each DBE firm will participate in this contract. The DBE goal may be satisfied by a commitment to DBE participation on the contract as a prime contractor, joint venture partner, subcontractor, trucker, manufacturer, supplier or broker.
 - e. The estimated dollar value of each DBE's participation/ DBE credit on the contract;
 - f. The estimated percent of the total bid for each DBE.
3. All DBE firms which are listed on the DBE Commitment Form must:
- a. Be certified by the MNUCP as DBE at time of bid submittal; and,
 - b. Be listed in the **MNUCP DBE Directory**. The MNUCP DBE Directory can be found at: <https://mnucp.metc.state.mn.us/>.

3.3 DBE LETTER OF INTENT FORM (due at the time of bid)

All DBE Letter(s) of Intent are required at the time of bid and must be completed by each DBE firm listed on the DBE Commitment Form as being utilized for credit to meet the goal.

1. Must be completed and signed by Bidder and DBE representative.
2. A selection of how each DBE firm will participate in this contract.
3. A description of the work to be performed or materials to be supplied by each DBE.
4. The DBE bid amount.
5. The estimated dollar value of each DBE's participation on the contract.

3.4 DBE GOOD FAITH EFFORTS REQUIREMENT (due at the time of bid)

Award of this contract is conditioned on meeting the requirements of 49 C.F.R. Section 26.53, requiring Bidders to make good faith efforts to meet the DBE participation goal specified in Section 2.1 of this document. Bidders are required to demonstrate good faith efforts to meet the goal by either:

1. Documenting the participation commitment of specific DBEs to meet the DBE participation goal, or

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2. Documenting adequate good faith efforts taken to meet the goal, if the DBE participation goal is not met.

If the information provided in the DBE Commitment Form, submitted with the bid, indicates that the committed DBE participation is less than the DBE participation goal established for this contract, the Bidder must provide documentation at the time of bid regarding the Bidder's good faith efforts to meet the DBE participation goal taken prior to the bid deadline. (See Section 4.1)

The bidder is responsible for the accurate calculation of the DBE participation and may submit DBE Good Faith Efforts along with a bid that they have identified as meeting the DBE participation goal. If the bidder miscalculates DBE participation and does not submit DBE Good Faith Efforts with the bid, the bidder may not submit DBE Good Faith Efforts after the bid deadline.

All DBE Good Faith Efforts to achieve the DBE goal must be accomplished by the bid deadline and submitted with the bid. No DBE Good Faith Efforts carried out after the bid deadline will be considered.

PART 4 - PRE - AWARD

4.1 GOOD FAITH EFFORTS DETERMINATION

In accordance with 49 C.F.R. Section 26.53 and Appendix A to Part 26, the following guidelines will apply to a good faith efforts determination.

The Bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 C.F.R. Part 26 which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. (See Section 3.4 and 00485 – DBE Good Faith Efforts Form)

All Good Faith Efforts to achieve the DBE participation goal must be completed by the bid deadline.

The Bidder must submit copies of each DBE and non-DBE subcontractor quote submitted to the Bidder when a non-DBE subcontractor was selected over a DBE for work on the contract. The Council will review whether the DBE prices were substantially higher and contact the DBEs listed to inquire as to whether the DBEs were contacted by the Bidder.

1. The Council's DBE Liaison Officer will determine whether a Bidder made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 C.F.R. Section 26.53, and Appendix A to Part 26. Compliance will be determined on a case-by-case basis based on a review of documentation including a review of the following types of activities.

The following is not an exclusive or exhaustive list and other factors, or types of efforts may be relevant in appropriate cases.

- a. Soliciting through all reasonable and available means (the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid meetings and events, advertising or written notices, posting of Notices of Sources Sought or Requests for Proposals, written notices or emails to all DBEs listed in the MNCUP DBE Directory of firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project. The Bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation. The Bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Bidder might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
- c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d. Negotiating in good faith with interested DBEs. The Bidder has the responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - i. Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for Bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a Bidder to perform the work of a contract with its own organization does not relieve the Bidder of the

responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- e. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder's efforts to meet the contract goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Bidder to accept unreasonable quotes in order to satisfy contract goals.
- f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required for this contract.
- g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal offices of minority/women business assistance; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- i. The performance of other Bidders in meeting the contract goal. For example, when the apparent successful Bidder fails to meet the contract goal, but others meet it, the Council may reasonably raise the question of whether, with additional reasonable efforts; the apparent successful Bidder could have met the goal. If the apparent successful Bidder fails to meet the goal but meets or exceeds the average DBE participation obtained by other Bidders, the Council may view this, in conjunction with other factors, as evidence of the apparent successful Bidder having made good faith efforts.

4.2 ADMINISTRATIVE RECONSIDERATION PROCESS

The Council's DBE Liaison Officer will determine whether a Bidder made adequate good faith efforts to meet the DBE participation goal assigned. If the Council's DBE Liaison Officer determines that the apparent successful Bidder has failed to meet the good faith efforts requirements of this program, it will, before contract award, at the Bidder's request provide the Bidder an opportunity for administrative reconsideration.

The administrative reconsideration process provides an opportunity for the Bidder to make persuasive arguments as to whether the Bidder did or did not satisfy good faith efforts requirements of the DBE regulations, at the time of bid.

A. Administrative Reconsideration Request

1. The Contract Administrator will send the Bidder a letter notifying the Bidder of OEO's determination and will provide them the option to request an administrative reconsideration of the decision.
 - a. The letter will include the OEO basis for the decision and all material considered in making the determination pertaining to the Bidder's good faith efforts.
 - b. The material considered will be catalogued and labeled.
2. Bidder must within five (5) days make a written request to the Director of OEO for an administrative reconsideration.
3. Once a written request has been received, the DBE Liaison Officer will contact the Bidder to discuss the reconsideration process. Bidder will determine if they choose to proceed with an in-person hearing. The DBE Liaison Officer will obtain the contact information for the Bidder's representative.
4. The logistics of the administrative reconsideration will be coordinated by a designated OEO staff. OEO staff will contact the Bidder's representative for available hearing dates and coordinate with panel members to schedule a hearing. The hearing will be scheduled with at least seven (7) days advance notice. The administrative reconsideration hearing will take place at the Metropolitan Council located at 390 Robert Street N., St Paul MN 55101.

Note: The Bidder shall indicate if they will be represented by legal counsel at the administrative reconsideration hearing. If the Bidder indicates that they will be represented by legal counsel, OEO may choose to have legal counsel present at the administrative reconsideration hearing.

B. Administrative Reconsideration Document Submission

1. Bidder at least three (3) days prior to the date of the reconsideration hearing shall have the opportunity to submit written material to support the request for reconsideration that it failed to meet good faith efforts. The Bidder may provide new information pertaining to the efforts made prior to the bid due date and time that was not originally provided to OEO with the initial bid submission.
 - a. The Bidder may include related documentation that will be catalogued and labeled.
2. Bidder's written material shall be submitted to the DBE Liaison Officer. The Bidder shall submit seven (7) copies of the documentation to the DBE Liaison Officer who will distribute

one copy to each of the following: Reconsideration Chair, two reconsideration panel members, DBE Liaison Officer, EO Consultant, Court Reporter, and Council attorney (if applicable).

C. Administrative Reconsideration Panel

1. The Administrative Reconsideration hearing panel will consist of three Metropolitan Council staff who did not take part in the original determination that the bidder failed to make adequate good faith efforts.
2. The panel will consist of a chair and two panel members.

D. Administrative Reconsideration Hearing

During the administrative reconsideration hearing, OEO and the Bidder will have an opportunity to make a persuasive presentation to a neutral panel. The reconsideration panel will consider in its determination the information presented about the Bidder's actions, documentation, and efforts that occurred prior to the submission of the bid.

1. Chair will open the hearing with an introduction of all in attendance, explain the purpose of the reconsideration, and outline the order for the hearing.
2. Court reporter introduces self and asks clarifying questions throughout the hearing to capture accurate record of the reconsideration hearing.
3. Each party will be given 30 minutes to present their information. OEO staff will present first. Bidder will present second. Each party will have 5 minutes to respond after the Bidder has completed their presentation (if necessary). This will not be a cross examination.
4. At the conclusion of both of their presentations, each party will have the opportunity to ask questions of the other party by directing questions to the panel chair.
5. The panel members may ask questions of each party at the conclusion of both of their presentations.
6. The panel will not consider information presented by either party that was not a part of the original good faith efforts submission with the bid.
7. A licensed court reporter will audio tape and transcribe the proceedings for documentation and audit purposes.
8. Upon conclusion of the presentations, all parties, excluding the panel members, will exit the hearing room. The panel may remain to discuss the reconsideration.

9. The panel Chair will write the decision and submit the decision to the Contract Administrator.
10. Within fourteen (14) days after the date of the reconsideration hearing, the Contract Administrator will send OEO and the Bidder a written documentation of the panel's decision. The written decision will explain the basis of the determination that the Bidder did or did not meet the goal and make adequate good faith efforts to do so.
11. The decision of the reconsideration panel is the final decision of the Metropolitan Council.

When applicable, in accordance with 49 C.F.R. Section 26.53, the result of the Council's reconsideration process is not subject to administrative appeal to USDOT or the Federal Transit Administration.

Determinations and reconsiderations regarding failure to meet DBE requirements for this contract are handled in accordance with the provisions of this Section 4.2 and are not subject to the protest procedures in Document 00490 Protest Procedures.

4.3 COUNTING DBE PARTICIPATION

A. COUNTING DBE PARTICIPATION – GENERAL

In accordance with 49 CFR Section 26.55, the Council will utilize the following guidelines in determining the percentage of DBE participation that will be counted toward the overall DBE goal:

1. If a firm is not certified as a DBE in accordance with the standards of Subpart D of the regulations at the time of the execution of the contract, the firm's participation toward any DBE goals will not be counted, except as provided in 49 CFR Section 26.87(i)..
2. The dollar value of work performed under a contract with a firm after it has ceased to be certified will not be counted toward the overall goal.
3. The participation of a DBE subcontractor toward the Contractor's DBE achievements or the overall goal will not be counted until the amount being counted toward the goal has been paid to the DBE.
4. When a DBE participates in a contract, the value of the work actually performed will be counted as follows:
 - a. The entire amount of that portion of a construction contract (or other contract not covered by paragraph 49 CFR Part 26.55) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the

contract, including supplies purchased or leased equipment by the DBE (except supplies, and equipment the DBE subcontractor purchases or leases from the Contractor or its affiliate).

- b. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as, professional, technical, consultant, or managerial services; or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided that the Council determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontract work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.
5. When a DBE performs as a participant in a joint venture, the Council will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
6. The Council will count expenditures to a DBE subcontractor toward DBE goals only if the DBE is performing a commercially useful function on that contract:
- a. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Council will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors.
 - b. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Council will examine similar transactions, particularly those in which DBEs do not participate.
 - c. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion

of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Council will presume that it is not performing a commercially useful function.

- d. When a DBE is presumed not to be performing a commercially useful function as provided in this program, the DBE may present evidence to rebut this presumption. The Council may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - e. The Council's decisions on matters of whether a DBE performs a commercially useful function are subject to review by the concerned operating administration (FTA), but not subject to an administrative appeal to USDOT.
7. The Council will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- a. The Council will count 100% of the cost of the materials or supplies toward DBE goals if the materials or supplies are obtained from a DBE manufacturer. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described in the specifications.
 - b. The Council will count 60% of the cost of the materials or supplies toward DBE goals if the materials or supplies are purchased from a DBE regular dealer. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold to or leased to the public in the usual course of business.
 - i. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - ii. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in 49 CFR Section 26.55(e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis.

- iii. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of 49 CFR Section 26.55(e)(2).
- iv. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the Council will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided that the Council has determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The Council will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

B. COUNTING DBE PARTICIPATION – TRUCKING

1. DBE trucking companies must perform a commercially useful function in order to receive DBE credit for the trucking services they perform on a contract. To perform a commercially useful function, a DBE trucking company must:
 - a. Satisfy the requirements listed in Section 4.3(A)(6)(a-e), and;
 - b. Own and operate at least one fully licensed, insured, and operational truck used on its contract.
2. The Council will award DBE credit to DBE trucking companies providing trucking services, defined as hauling of any material or supplies that the firm does not pay for or intend to be counted as a regular dealer, that perform a commercially useful function as illustrated below:
 - a. A DBE trucking company will receive 100% credit for trucking services for each of its own DBE trucks and any DBE firm, including DBE certified independent truck operators working under the contract.
 - b. A DBE trucking company will receive 100% credit for trucking services and any related fees associated with removing materials from a job site.
 - c. A DBE trucking company will receive 100% credit for commission or broker fees on any portion of a contract that is completed by non-DBE firms or independent truck operators as described in 4.3(A)(4)(b).
3. If a DBE trucking company is considered a regular dealer of bulk items the DBE will receive 60% DBE credit of the totality of the contract if the DBE trucking company:

- a. Pays for the bulk materials (ex. sand, gravel, liquid asphalt); and
 - b. Owns and operates distribution equipment for the bulk items.
4. DBE trucking companies operating as regular dealers of bulk items must perform a commercially useful function in order to receive DBE credit for the regular dealer services they perform on a contract. To perform a commercially useful function, an DBE trucking company operating as a regular dealer must:
- a. Be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals; and
 - b. Own and operate at least one fully licensed, insured, and operational truck used on its contract.

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

C. COUNTING DBE PARTICIPATION - SUPPLYING / BROKERING OF SPECIALTY MATERIALS

- 1. Many Council contracts contain materials, equipment, or supplies which are manufactured to contract specifications, outsized, unique, or just not economically feasible to be routinely kept in stock. These “specialty materials”, which include but are not limited to items such as utility pipe, large electrical items, and rail sections, are typically shipped directly from a manufacturer to specific job sites based upon standard industry practice.
- 2. In accordance with 49 CFR 26.55 and USDOT’s published Q & A clarifications, the Council will rebuttably presume that these “specialty materials” purchased by a certified DBE Supplier are being supplied in a manner best described as that of a contract expediter or broker. The amount of DBE “credit” participation that Bidders may count towards the overall DBE contract goal will be limited to the DBE Supplier’s commission and cost in transporting the materials, and not the cost of the materials themselves. The Council anticipates that standard commissions and transportation value amounts will range between 1-5% of the cost of materials.
 - a. The Bidder can rebut this presumption by demonstrating, prior to bid due date, that the DBE supplier will perform a Commercially Useful Function (CUF) when supplying the specialty materials. The Bidder can demonstrate such CUF by establishing that the DBE Supplier:

- i. Actively and independently participates in the bidding, sourcing, and estimating of the materials and supplies;
 - ii. Maintains the items procured in stock or actively conducts business with items of the same nature;
 - iii. Has the capability and ability to ensure that the transportation and storage of said specialty materials will be arranged and take place at the DBE's owned or leased facilities;
 - iv. Provides an added value to the transaction, such as selection variety, product alternates, logistical management; and
 - v. Has the ability to purchase directly from the manufacturers of the specialty item.
3. If a DBE Supplier firm overcomes the rebuttable presumption of acting as a contract broker or expeditor, and is recognized by OEO staff as performing a CUF then:
 - a. The Bidder will need and receive written OEO staff confirmation of the DBE Supplier's designation prior to bid due date; and
 - b. The Bidder can count the value of the DBE Supplier's supplied specialty materials towards the DBE goal at 60% supplier value.
4. A DBE supplier may be recognized as acting as a supplier and a contract broker /expediter if procuring different materials as part of the same contract. Any materials that the DBE supplier provides which meet the above CUF criteria will be counted at the supplier rate of 60%, while the materials supplied which do not meet the CUF criteria will be counted at the lower rate of 1-5%.

PART 5 - POST AWARD

5.1 ELECTRONIC REPORTING REQUIREMENTS

The awarded Bidder is required to enter monthly DBE invoice and payment amounts into the Council's online Contract Management System (CMS). The CMS can be found in at: www.dbecms.metc.state.mn.us

Upon award of a contract, an EO Consultant will assign the awarded Contractor a CMS user account and provide the Contractor a CMS User Manual detailing the following guidelines:

[Project Name]

1. The required data for all DBE subcontractors to be used on the project, must be entered into CMS prior to the construction start date;
2. All DBE billing, submitted during the reporting period, must be finalized and entered into the CMS prior to submission of Contractor's payment application;
 - a. If there is no DBE billing during the reporting period, the Contractor must send a notification email to the project's Council Authorized Representative (CAR) and EO Consultant, stating that there were no DBE invoices received during the reporting period. Notification must contain the payment application number, and reporting period;
 - b. Contractor must update Total Billed Amount even if there is no DBE billing to report.
 - c. Any changes to the DBE subcontractor list or their contract amounts must be reported through CMS on a monthly basis. Changes include:
 - i. DBE firms removed from the project;
 - ii. DBE firms added to the project;
 - iii. Increases/Reductions to DBE contract amounts;
 - iv. Credit adjustments; and
 - v. DBE Contact information.
 - d. All payments made to DBE firms, must be finalized and entered within 10 days of receipt of payment from the Council. DBE payments, and required data fields, must be entered into CMS;
 - e. Failure to comply with the provision of this section, may result in the Council finding the CONTACTOR in noncompliance with the DBE provision of this contract and may result in Imposition of Administrative Sanctions as described in section FTA-14.6 of the document 00710 Supplemental Condition.

[Contract Number]

Disadvantaged Business Enterprise (DBE)
Subcontracting Policy and Procedure

00485 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) COMMITMENT FORM

(Must be completed, signed, and submitted with each bid)

Bidder Name	Project Name				DBE Goal
DBE Name (Legal business name used for certification)	Description of Work	Participating As? <i>Prime, Subcontractor, Trucker, Supplier or Broker</i>	DBE Bid Amount	DBE Credit amount <i>dollar value</i>	DBE %
Use copies of this form if additional space is needed to list committed DBEs.				Total Value	Total %

I have read the DBE requirements in Document 00485 Disadvantaged Business Enterprise (DBE) Subcontracting Policy and Procedure. I further certify that the Bidder has made appropriate efforts to comply with the DBE requirements for this contract by making good faith efforts to meet the assigned DBE goal as specified in 00485 Disadvantaged Business Enterprise (DBE) Subcontracting Policy and Procedure. I am authorized on behalf of the Bidder to submit this certification to the Council. This certification is a material representation of fact on which the Council may rely in awarding the contract.

Bidder Name / Title / Phone: _____ / _____ / _____

Bidder Signature: _____ Date: _____

[Contract Number]

DBE Commitment Form and Letter of Intent and Good Faith Efforts

00485 -1

00485 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) LETTER OF INTENT

(Must be completed and signed by each DBE listed on 00485 Commitment Form, and submitted with each bid)

Bidder:	Contract Number:	Project Name:

DBE Name: _____ Phone: _____

Address: _____ City: _____ State: _____ Zip: _____

Participating As: ___ Prime Contractor ___ Subcontractor ___ Supplier (60% credit) ___ Manufacturer ___ Trucker ___ Broker

Description	DBE Bid Amount	Dollar Amount for DBE Credit

1. This is a letter of intent between the bidder on this project and a DBE firm to perform subcontract work on this project.
2. By signing below, the bidder is committing to utilize the above-named DBE to perform the work described above.
3. By signing below, the above-named DBE is committing to perform the work described above.

Affirmation: I hereby affirm that the information above is true and correct.

Bidder Representative Name: _____ Title: _____

Bidder Representative Signature: _____ Date: _____

DBE Representative Name: _____ Title: _____

DBE Representative Signature: _____ Date: _____

00485 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS (GFE) SUBMISSION REFERENCE

(Must be submitted at time of bid when DBE Commitment is less than the assigned goal)

See Section 3.4, Good Faith Efforts Determination, section of the DBE 00485 Subcontracting Policy and Procedure for guidelines in applying Good Faith Efforts

The bidder must show that it took all necessary and reasonable steps to achieve the DBE goal which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. For reference, a list of actions to be considered is provided; the list is not exclusive or exhaustive.

The bidder's good faith efforts information submission should address the following:

1. Narrative statement

- A statement of the bidder's efforts and overall plan for obtaining DBE participation noting barriers or challenges encountered in obtaining DBE participation. Specifically, detailing how all necessary and reasonable steps to achieve the DBE goal or other requirements which, by their scope, intensity, and appropriateness to the objective of achieving the DBE goal, could reasonably be expected to obtain sufficient DBE participation were taken- even if the bidder was not successful.

2. Documented solicitation efforts

The solicitation requirement includes the initial solicitation and appropriate follow up.

- Evidence of solicitation efforts to DBEs such as copies of requests for quotes sent via email or fax to DBE firms with identification of the firms clearly stated
- List of all DBE firms contacted to date, contact name and response; or, email distribution lists with date and time clearly indicated
- Evidence the solicitations to DBEs provided sufficient information about the type of work available on the project
- Evidence the current [DBE Directory](#) was used to identify DBE firms
- Evidence of efforts taken to break out and solicit for work in economically feasible units
- Evidence solicitations included work that the bidder would otherwise self-perform

3. Timely notice

- Evidence the solicitation notices (email/fax) were sent timely to DBE firms allowing sufficient time for response.
- Evidence the solicitation notice included sufficient information about the project such as:
 - Name and location of project
 - Bid due date
 - Scope of work requested
 - Location where DBE's can review plans and specifications
 - Date and time to submit quote
 - Contact name for technical assistance
 - Any special requirements

4. Assistance

- A detailed explanation of efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
- A detailed explanation of the efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

5. Follow up

- Evidence of sufficient efforts to follow up with DBE firms. The bidder is encouraged to keep a communication log that documents follow up efforts. Information on the log shall include:
 - Type of contact (fax, telephone, e-mail)
 - Name of contact person
 - Name of DBE firm
 - Date and time of DBE contacted
 - Response received
 - Reason for DBE not bidding project (if applicable)

6. Outreach and Advertisements

- Evidence of DBE informational workshops and/or Metropolitan Council sponsored DBE events, such as networking sessions, DBE conferences, DBE/Contractors meetings, etc. that the bidder hosted or attended
- A detailed explanation of the effective use of the services of available minority/women community organizations; minority/women contractor's groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to aid in the recruitment and placement of DBEs
- Copies provided of any advertisements placed on hardcopy or websites. Advertisements should include information about the project(s), type(s) of work for which quotes are being solicited, and specific contact information for the bidder

7. Copies of quotes

- Provide copies of quotes from all non-DBEs
 - Indicate which quotes are being utilized
- Provide copies of quotes from all DBEs
 - Indicate which quotes are being utilized
 - For DBEs quoted but not selected, provide explanation as to why quote was not accepted

8. Explanation of rejected DBE quotes

- A detailed explanation for not accepting any DBE quotes submitted but not selected
- Each non-accepted quote should be addressed individually
- Provide an explanation of the efforts made to negotiate in good faith with interested DBEs
- Provide information about any cost comparisons that were considered in the decision to not accept DBE quotes
 - The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for failure to meet the contract DBE goal, as long as such costs are reasonable
- The bidder is not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Provide a written explanation for this conclusion if such a determination is made.

9. Self-Performance

- Bidder shall provide a detailed list of scopes and dollar value of those scopes for which they intend to self-perform