

APPENDIX to REQUEST FOR PROPOSALS

Station Area Strategic Plans Southwest LRT Line Minneapolis

Appendices A-E must be completed by the proposer and submitted with the proposal.

APPENDIX A: CERTIFICATION REGARDING LOBBYING

DOCUMENT 00470
LOBBYING RESTRICTION CERTIFICATION

Bidder Company Name: _____
Contract # A100338

The undersigned Bidder certifies, to the best of his or her knowledge and belief, that:

- a) 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 Federal 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 Federally funded 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.
- b) **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 Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federally funded contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is 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 Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. Any person who makes a prohibited expenditure or fails to file or amend the required certification or disclosure form is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

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

Bidder Name: _____

By: _____
(Signature of Bidder's Authorized Official)

Date: _____

Name: _____
(Name of Authorized Official)

Title: _____
(Title of Authorized Official)

APPENDIX B: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

DOCUMENT 00457
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

Bidder Company Name:

Contract # A100338

INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:

1. **By signing and submitting this bid, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification referred to in this paragraph is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, HCRRA may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to HCRRA if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered participant,” “persons,” “lower tier covered transaction,” “principal,” “bid,” and “voluntarily excluded,” as used in this paragraph, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 49 CFR part 29. You may contact HCRRA for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by HCRRA.
6. **The prospective lower tier participant further agrees by submitting this bid that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.**
7. A participant in a covered transaction may rely upon certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principles. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this paragraph. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under subparagraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, HCRRA may pursue available remedies including suspension and/or debarment.

CERTIFICATION

1. The prospective lower tier participant certifies, by submission of this bid, that neither it nor its "principals" (as defined at 49 CFR section 29.105(p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
2. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this certification.

Bidder Name: _____

By: _____ Date: _____

Name: _____

Title: _____

END OF DOCUMENT

APPENDIX C: AFFIRMATIVE ACTION CERTIFICATION STATEMENT

DOCUMENT 00450

BIDDER'S AFFIRMATIVE ACTION CERTIFICATION STATEMENT

(NOTE: If the bid amount exceeds \$100,000, EITHER this form OR a currently effective affirmative action Certificate of Compliance for the Bidder, issued by the Minnesota Department of Human Rights, MUST be submitted with the bid. See Document 00200 - Instructions to Bidders, Part 1.8 for additional information.)

Instructions: If a bid is in an amount greater than \$100,000, HCRRA cannot accept the bid unless the Bidder can affirm either Statement #1 or Statement #2 below. The Bidder must select (by checking the appropriate box) and certify as true one of the two statements below, if it is able to do so. In making its certification, the Bidder should carefully bear in mind the post-submittal requirements noted in connection with each statement. After bid opening HCRRA reserves the right to require documentation from the Bidder supporting the certification or to otherwise verify the accuracy of the certification. If neither statement can be affirmed, no bid should be submitted.

CHECK ONLY ONE BOX!

<input type="checkbox"/>	The business executing this certification did have more than 40 full-time employees within the State of Minnesota on one or more working days during the 12 months previous to the date the bid is due. IN ADDITION, the business either: has submitted an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals to the Commissioner of Human Rights for approval; or has a currently effective Certificate of Compliance from the Commissioner of Human Rights indicating that it has an approved affirmative action plan. Note: Prior to execution of any agreement arising out of this procurement, the Bidder will be required to provide HCRRA with a copy of its currently effective Certificate of Compliance.
<input type="checkbox"/>	The business executing this certification did not have more than 40 full-time employees within the State of Minnesota on any working day during the 12 months previous to the date the bid is due. Note: Prior to execution of any agreement arising out of this procurement, the Bidder will be required to provide HCRRA with at least one of the following on a form to be provided by HCRRA: a certification that the business has a currently effective Certificate of Compliance issued by the Commissioner of Human Rights, along with the copy of that document; or a certification that the business is in compliance with federal affirmative action requirements; or a certification that the business's primary place of business is not in the United States; or a certification that the business did not have more than 40 full-time employees on any working day during the 12 months prior to the date on which it submitted its bid, in the state where the business has its primary place of business.

CERTIFICATION

On behalf of the Bidder, I certify that the above response is true as of the date this form is signed. I have read and understand the requirements related to this certification statement.

Bidder Name:

By:

Name:

Date:

Title:

APPENDIX D: SUBCONTRACTOR INFORMATION

SUBCONTRACTOR INFORMATION FORM (FTA)

Proposer Company Name: _____

Contract # A100338 **Project Name:** SW Station Area Planning-Minneapolis

(NOTE: This form MUST be submitted with each proposal.)

Check ONE of the following:

No subcontractors will be used by Proposer on this project.

Subcontractors are proposed to be used on this project. The following is 1) a list of subcontractors proposed to be used on the project AND 2) a list of subcontractors who submitted bids or quotes to the Proposer for the project but were not selected by the Proposer:

1) SUBCONTRACTORS PROPOSED TO BE USED ON THE PROJECT:

Firm Name	Address	Telephone Number

2) SUBCONTRACTORS WHO SUBMITTED BIDS OR QUOTES BUT WERE NOT SELECTED:

Firm Name	Address	Telephone Number

CERTIFICATION

On behalf of the Proposer identified below, I certify that the information provided in this form is true and correct.

Proposer Name: _____

By: _____

Date: _____

Name: _____

Title: _____

APPENDIX E: DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUBCONTRACTING POLICY & PROCEDURE

**DOCUMENT 00485
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SUBCONTRACTING POLICY AND PROCEDURE**

Part 1 DBE PROGRAM

1.1 Policy

- A. The HCRRA, a US Department of Transportation (USDOT) grant sub-recipient, shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of 49 CFR part 26. USDOT-assisted contracts include financial assistance from USDOT, the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), or the Federal Aviation Administration (FAA).
- B. This contract is funded in part with a grant from the Federal Transit Administration (FTA). The Disadvantaged Business Enterprise (DBE) requirements of the Transportation Equity Act for the 21st Century (TEA-21) and 49 CFR part 26 apply to the contract for this Project.
- C. This **Document 00485 Disadvantaged Business Enterprise (DBE) Subcontracting Policy and Procedure** contains pre-award requirements for Bidders. Post-award requirements relating to Disadvantaged Business Enterprise are contained in **Document 00710 Supplemental Conditions for FTA-Funded Projects** which should also be carefully reviewed by Bidders.
- D. Attached to this document is the following form:

- 1. **Document 00485 Disadvantaged Business Enterprise Information and Certifications**

Submittal requirements for this form are described in this document.

1.2 DBE Participation Goal

For the purposes of this contract, HCRRA has established a 15% goal for DBE participation.

1.3 Definitions

- A. Disadvantaged Business Enterprise (DBE) means a for-profit small business concern which is at least 51% owned by one or more socially and economically disadvantaged individuals. In the case of any publicly-owned business, at least 51% of the stock must be owned by one or more socially and economically disadvantaged individuals; and the management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

B. Small Business Concern (with respect to firms seeking to participate as DBEs in USDOT-assisted contracts) means a small business as defined pursuant to the Small Business Act (13 CFR 121).

C. Socially and Economically Disadvantaged Individuals (for purposes of USDOT-assisted projects) means any individual who is a citizen (or lawfully admitted permanent resident) of the United States, and who is:

- a) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis;
- b) Women (regardless of race, ethnicity or origin); or
- c) Individuals found to be socially and economically disadvantaged by the U.S. SBA pursuant to Section 8(a) of the Small Business Act.

HCRRA will make a rebuttable presumption that individuals in the above groups are socially and economically disadvantaged. HCRRA may, on a case-by-case basis, determine or accept the determination by another USDOT recipient, that individuals who are socially and economically disadvantaged in accordance with 49 CFR 26, Subpart D.

1.4 Counting DBE Participation

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

- A. If a firm is not currently 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).
- B. 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.
- C. 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.
- D. When a DBE participates in a contract, the value of the work actually performed will be counted as follows:
 1. 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 equipment leased by the DBE (except supplies, and equipment the DBE subcontractor purchases or leases from the CONTRACTOR or its affiliate).
 2. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial

3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontract work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.
- E. When a DBE performs as a participant in a joint venture, HCRRA 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.
 - F. HCRRA will count expenditures to a DBE Contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract:
 1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, HCRRA 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.
 2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, HCRRA will examine similar transactions, particularly those in which DBEs do not participate.
 3. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, HCRRA will presume that it is not performing a commercially useful function.
 4. When a DBE is presumed not to be performing a commercially useful function as provided in this program, the DBE may present evidence to rebut this presumption. HCRRA may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 5. HCRRA'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.

- G. HCRRA will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on its contract.
 3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
 6. For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for the use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- H. HCRRA will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

HCRRA 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.

HCRRA 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.
- J. 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.
- K. Packers, 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).
- L. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, HCRRA 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 HCRRA has determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. HCRRA will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

Part 2 BID/AWARD PHASE ACTIVITIES

2.1 Requirement of Good Faith Efforts

Bidders are advised that award of this contract is conditioned on meeting the requirements of 49 CFR section 26.53, requiring Bidders to make good faith efforts to meet the DBE participation goal specified in section 1.2 of this document. Bidders are required to demonstrate good faith efforts to meet the goal by either:

- documenting the participation of specific DBEs to meet the goal, or
- documenting adequate good faith efforts to meet the goal, even if the efforts were not successful in obtaining sufficient DBE participation to meet the goal.

2.2 Bid Submittal Requirements

- A. All bids MUST include a properly completed **Document 00485 Disadvantaged Business Enterprise Information and Certifications** form. The form consists of Parts A and B. Part A must be completed by every Bidder. Part B must be completed by the Bidder if required in accordance with the following instructions.
- B. In Part A of the form, the Bidder must list all firms, if any, whose participation is committed to be credited toward meeting the DBE goal and the following information regarding each such firm:
 - 1. The name and address of each DBE prime contractor, joint venture partner, subcontractor, trucker or supplier that the bidder intends to credit toward the

2. A description of how each DBE firm will participate in this contract. The DBE goal may be satisfied by a commitment to DBE participation in the contact as a prime contractor, joint venture partner, subcontractor, trucker or supplier.
 3. The state in which the DBE is currently certified.
 4. A description of the work to be performed or materials to be supplied by each DBE.
 5. The estimated dollar value of each DBE's participation in the contract.
 6. The estimated percent of the total bid for each DBE. The percentage allocated for each DBE must be in accordance with the provisions for performing a commercially useful function, as required by 49 CFR section 26.55.
- C. All DBE firms which are listed in Part A of **Document 00485 Disadvantaged Business Enterprise Information and Certifications** must, as of the date bids are due, be:
1. certified by HCRRA as a DBE; or
 2. certified by any other United States Department of Transportation (USDOT) recipient and then certified by HCRRA within 30 days of the execution of the contract; or
 3. included on the **Metropolitan Airports Commission (MAC)/Minnesota Department of Transportation (MnDOT)/Metropolitan Council Disadvantaged Business Enterprise (DBE) Directory**. All of the firms on this listing shall be considered "currently certified" for the purposes of bid submittal. This listing is available from HCRRA and can also be found at the following website:

<http://www.metrocouncil.org/about/dbeinfo.htm>

The provisions of 49 C.F.R., part 26.87 (relating to removal of a DBE's eligibility) apply to all firms credited under this paragraph.

- D. If no DBE participation is committed, the Bidder must indicate so on the form. Part A of the form includes a Certification of DBE Participation and Good Faith Efforts which must be filled in and signed on behalf of the Bidder in all cases. Part B of **Document 00485 Disadvantaged Business Enterprise Information and Certifications** must be completed by the Bidder if the information provided in Part A of the form indicates either:

no committed DBE participation, or

committed DBE participation at less than the DBE goal established above;

In Part B, the Bidder must provide information regarding its good faith efforts to meet the DBE goal. Part B also includes a certification which must be filled in and signed on behalf of the Bidder if completion of Part B is required.

- E. Failure to submit a properly completed **Document 00485 Disadvantaged Business Enterprise Information and Certifications** form with the bid will result in no further consideration of the bid by HCRRA.

Part 3 POST-BID/PRE-AWARD REVIEW

3.1 Post-Bid Submittals

- A. After the opening of bids but before award of the contract, HCRRA will notify the three apparent low Bidders that they are being considered for award. Each Bidder so notified must, within 7 days from receipt of the notice, meet the following additional requirements:
 - 1. The Bidder must submit written confirmation from each DBE included in the Bidder's **Document 00485 Disadvantaged Business Enterprise Information and Certifications** form confirming the DBE participation in the project.
 - 2. The bidder must submit any clarifications or details requested by HCRRA regarding: a) its pre-bid efforts to obtain DBE participation, and/or b) the good faith efforts information submitted with the bid.
- B. Failure to comply with a post-submittal requirement may result in no further consideration of the bid by HCRRA.

3.2 Good Faith Efforts Determination

In accordance with 49 CFR section 26.53 and Appendix A thereto, the following guidelines will apply to a good faith efforts determination.

- A. The bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 CFR 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. HCRRA'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 CFR section 26.53, and Appendix A thereto. Compliance will be determined on a case-by-case basis, based on a review of documentation of the following types of activities:
 - 1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - 2. 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.

3. 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.
4. 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.
5. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for 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.
6. 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 rejection or non-solicitation of bids in the bidder's efforts to meet the contract goal.
7. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required for this contract.
8. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
9. 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.
10. 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, HCRRA 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, HCRRA may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

- B. If HCRRA determines that the apparent successful bidder has failed to meet the Good Faith Efforts requirements of this program, it will, before contract award, provide the bidder an opportunity for administrative reconsideration. The bidder will have the opportunity to:
 - 1. Provide a written documentation or argument concerning the issue of whether the bidder met the goal or made adequate good faith efforts to do so; and
 - 2. Meet in person with HCRRA or its reconsideration official to discuss the issue of whether the bidder met the goal or made adequate good faith efforts to do so.
- C. HCRRA will send the proposer a written decision on its reconsideration, explaining the basis on which the determination was made whether it met the goal or made adequate good faith efforts to do so.
In accordance with 49 CFR section 26.53, the result of HCRRA's reconsideration process is not subject to administrative appeal to USDOT or the Federal Transit Administration.
- D. Determinations and reconsiderations regarding failure to meet DBE requirements for this contract are handled in accordance with the provisions of this section 3.2 and are not subject to the protest procedures in **Document 00490 Protest Procedures**.

Part 4 POST-AWARD REQUIREMENTS

Additional post-award requirements relating to Disadvantaged Business Enterprise are contained in **Document 00710 Supplemental Conditions for FTA –Funded Projects**.

END OF DOCUMENT

CERTIFICATION OF DBE PARTICIPATION AND GOOD FAITH EFFORTS

On behalf of the Bidder identified below, I certify that:

(check ONE of the following)

No DBE participation is committed on this project.

Bidder is committed to use the DBE subcontractor(s) listed in this form on this project at the stated percentage(s).

I further certify that I have read the DBE requirements in **Document 00485 Disadvantaged Business Enterprise Subcontracting Policy and Procedure** and applicable federal regulations cited therein. 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 DBE goal specified in **Document 00485 Disadvantaged Business Enterprise Subcontracting Policy and Procedure**. I am authorized on behalf of the Bidder to submit this certification to HCRRA. This certification is a material representation of fact on which HCRRA may rely in awarding the contract.

Bidder Name: _____

By: _____

Date: _____

Name: _____

Title: _____

Note: If the above certification indicates 1) that no DBE participation is committed, or 2) DBE participation is committed at less than the DBE goal established in Document 00485 Disadvantaged Business Enterprise Subcontracting Policy and Procedure, the Bidder must complete the following Part B of this form.

DOCUMENT 00485

**DISADVANTAGED BUSINESS ENTERPRISE INFORMATION AND
CERTIFICATIONS**

PART B

THE FOLLOWING GOOD FAITH EFFORTS WERE TAKEN IN ORDER TO MEET THE DBE PARTICIPATION GOAL FOR THIS CONTRACT. Use additional sheets if necessary to supplement the responses and attach the additional sheets to this form:

(Note: the following is a list of types of actions which will be considered by HCRRA as a part of the Bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. In each case, examples of the types of activities contemplated by the described action are outlined for the Bidder's convenience and assistance. The providing of the information given as examples will be useful in determining the Bidder's good faith efforts. However, completion of or failure to complete all the example activities will not necessarily result in either finding or not finding a lack of good faith efforts; and other activities not provided as examples may be used by the Bidder to demonstrate good faith efforts.)

1. Describe Bidder's efforts to include DBEs on solicitation lists and to solicit through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the project. (Include information indicating whether the solicitation of interest took place within sufficient time to allow the DBEs to respond to the solicitation and/or if Bidder took appropriate steps to follow up the initial solicitations.)

a. Did the Bidder take any of the following actions in order to assist Bidder in carrying out its solicitation of DBEs for participation in the project (check those that apply):

Bidder attended pre-bid to learn about project and DBE goals.

Bidder reviewed bid document for DBE policy regarding HCRRA's expectation of Bidders regarding DBE participation.

Bidder reviewed bid document for DBE policy sections in order to understand the correct method of counting DBE participation.

- b. List advertising or other means that the Bidder used to solicit interest in having DBE subcontractors participate with the Bidder on this project:

Advertising or Other Means Used	Number of days prior to bid deadline advertisement occurred

- Describe what follow-up actions with DBEs were undertaken by the Bidder following the described solicitation activities:

 - If no advertising or other means were used for the described purpose, explain why not:
- c. Did the Bidder take any of the following actions in order to encourage potential major subcontractors to solicit DBE firms for participation in that subcontractor's portion of the potential work (check those that apply)

- Provided interested subcontractors with DBE goal information and contracting policy documents. If checked, when did this occur? _____
- Provided interested subcontractors with information on where to find eligible DBE firms.
If checked, when did this occur? _____
- Negotiated or requested a target level of DBE participation with subcontractors. If checked, when did this occur? _____

Describe any other efforts used by Bidder to solicit the interest of DBEs to participate with the Bidder on this project: 2. Describe Bidder's efforts to select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal would be achieved. (This includes, where appropriate, breaking out project 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; and establishing delivery schedules which will encourage DBE participation.)

- a. List specific areas/types of work that Bidder identified for DBE participation based on project needs and eligible DBEs listed in authorized directories:

Area/Type of Work	Number of DBEs identified who perform this area or type of work

- b. Did the Bidder break out any project items into economically feasible units to facilitate DBE participation? Yes No

If yes, describe up to six examples of work items that were broken out into small units for this purpose:

1.
2.
3.
4.
5.
6.

If no, explain why such an effort was not undertaken:

- c. Did the Bidder consider having one or more DBE firms perform work that the Bidder usually performs with its own forces? Yes No

If Yes, explain whether the Bidder was or was not successful and the factors for the result:

If No, explain why such an approach was not considered:

d. Describe any other efforts Bidder used to arrange the work of the project in order to increase the likelihood that the DBE goal would be achieved:

3. Describe Bidder's efforts to provide interested DBEs with adequate information about the plans, specifications, and requirements of the Invitation for Bids in a timely manner to assist them in responding to a solicitation:

a. Check below all applicable efforts used for the described purpose and, in each case, indicate when the effort took place:

Invited interested DBEs to utilize Bidder's plan room to discuss potential roles and the project. If checked, state when the invitation was made:

Provided interested DBEs with their own sets of project plans to review. If checked, state when the plans were provided: _____

Referred interested DBEs to a location where project plans could be reviewed. If checked, state when such referral or referrals took place and to what location the referral was made: _____

b. Describe any other efforts that Bidder made to provide interested DBEs with information about the plans, specifications, and requirements for the project and when those efforts took place.

4. Describe Bidder's efforts to negotiate in good faith with interested DBEs. (Include information on the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and information as to why additional agreements could not be reached for DBEs to perform the work.)

a. Did Bidder reject any bids from DBE firms?

If yes, explain why the bids were rejected:

DBE Firm	Reason why Bid was Rejected

b. Did the Bidder reject any bids from DBEs solely due to price differential? Yes

No

If yes, did the Bidder find the DBE's quotes excessive or unreasonable and, if so, explain why:

- c. Describe any other efforts by Bidder to negotiate in good faith with interested DBEs. In each case, provide the information described above in this Item #4:

5. Describe Bidder's efforts to avoid rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. (The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.)

- a. Did the Bidder reject any bids from DBEs solely because the Bidder did not consider the DBE qualified? Yes No

If Yes, describe the Bidder's investigation of each rejected DBE's capabilities and the specific reasons for rejection or non-solicitation of each rejected DBE:

- b. Describe any other efforts by Bidder to avoid rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities:

6. Describe Bidder's efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the Invitation for Bids:

Did the Bidder undertake any efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance? Yes No

If yes, describe those efforts below:

DBE Name	DBE Accepted Offer of assistance – Yes or No	Results of Effort if Offer of Assistance Accepted

7. Describe Bidder's efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services:

- a. Did the Bidder consider the formation of a joint-venture partnership with one or more DBE firms? Yes No

If yes, explain the results of that consideration:

If no, explain why the Bidder did not consider such action:

- b. Describe any of the other efforts that Bidder carried out to assist interested DBEs:

8. Describe Bidder's efforts to effectively use the services of available disadvantaged community organizations; disadvantaged contractors' groups; local, state, and federal disadvantaged business assistance offices; and other organizations to provide assistance in the recruitment and placement of DBEs, including the U.S. Department of Commerce's Minority Business Development Agency (MBDA):

- a. Check below any organizations that the Bidder used the services of to provide assistance in the recruitment of DBE firms:

National Association of Minority Contractors

Minnesota Minority Suppliers Development Council

Metropolitan Economic Agency/ PTAC Development

One or more of the Ethnic Chambers of Commerce

Association of Women Contractors

- b. List any other organizations that Bidder used the services of for the described purposes:

- c. If none of the organizations in paragraph a above were used and if no other organizations are listed by Bidder in paragraph b, explain why the services of such organizations were not utilized by the Bidder:

9. Describe other factors or types of efforts used by Bidder in its good faith effort to meet the project DBE goal:

10. Provide information regarding the Bidder's history of DBE/SBE/WBE/MBE goal achievement during the past five years on publicly funded projects and privately funded projects on which the Bidder served as a prime or major subcontractor and on which there was such a goal.

For publicly funded projects, report on all such projects but not exceeding five:

Name of Agency and Year(s) of Project	DBE/SBE/WBE/MBE Project Goal	Bidder's Actual DBE/SBE/WBE/MBE Goal Achievement on Project

For privately funded projects, report on all such projects but not exceeding three:

Name of Agency and Year(s) of Project	Project DBE/SBE/WBE/MBE Goal	Bidder's Actual DBE/SBE/WBE/MBE Goal Achievement on Project

CERTIFICATION

BIDDERS must sign the following certification.

On behalf of the Bidder identified below, I certify that I have read the DBE requirements in **Document 00485 Disadvantaged Business Enterprise Subcontracting Policy and Procedure**, and applicable federal regulations cited therein. I further certify that the Bidder has made appropriate efforts to comply with the DBE requirements for this contract by undertaking the efforts documented in this certification. I have enclosed or attached all documentation of the Bidder's efforts to comply with the DBE requirements, on which HCRRA may rely in determining whether the Bidder has met the good faith efforts requirements. I am authorized on behalf of the Bidder to submit this form and documentation to HCRRA. **This certification is a material representation of fact on which HCRRA may rely in awarding the contract.**

Bidder Name:

Date:

By:

Name:

Title:

APPENDIX F: PROTEST PROCEDURES

DOCUMENT 00490 PROTEST PROCEDURES

Request for Proposals Station Area Strategic Plans
Southwest LRT Line Minneapolis

FTA Section 5309 Subrecipient Contracts for Professional Services (Hennepin County Regional Railroad Authority) Metropolitan Council FTA Grant Recipient

The Hennepin County Regional Railroad Authority (HCRRA) strives to ensure fairness to every offeror for all goods and services procured through the established competitive processes. HCRRA acknowledges its responsibility to promptly and fairly investigate procurement protests that conform to the requirements of this procedure. HCRRA also acknowledges the interest of the public in resolving unjustified claims without unduly delaying needed procurements. To balance the interests of offerors and the public, these procedures require that offerors file protests in a timely manner, carefully document their allegations, and conform their protests to all requirements contained herein.

Offerors are encouraged to resolve questions or disputes informally before pursuing a written protest. If offerors believe they will be filing a protest, they are encouraged to advise the HCRRA verbally as soon as possible in order to maximize the offeror's options.

Written protests will be reviewed by designated staff, and a written protest decision will be issued. Protesters may request a single reconsideration of the protest decision. The decision of the designated protest authority is final. The HCRRA will not consider nor respond to oral protests.

Purpose

This procedure provides a process for a full and fair consideration of all claims that raise legitimate questions about the procurement process without allowing proposers to exploit protest procedures to obtain a competitive advantage or obstruct needed procurements. The requirements of this procedure serve important public purposes and offerors are cautioned that noncompliance will result in waiver of protest rights. Offerors must review the HCRRA procurement protest procedure carefully before filing a protest. At the time of filing a protest, the offeror agrees to be bound by this procedure.

Applicability

This policy is applicable to all protests arising from HCRRA procurements \$25,000 and over as a subrecipient of FTA 5309 Funds for the Southwest LRT Line. Note that violations of federal law or regulation will be handled by the complaint process as stated within that law or regulation.

If this procurement is funded in whole or in part by the Federal Transit Administration (FTA), offerors are hereby notified that a protester must exhaust all administrative remedies with the HCRRA before pursuing a protest with FTA. Reviews of protests by FTA will be limited to:

the HCRRA's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or violations of Federal law or regulation; or violations of State or Local Law or Regulation.

An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by HCRRA or other basis of appeal to FTA.

Definitions

For the purposes of this document:

- a) A *protest* is an offeror's remedy for correcting a perceived wrong in the procurement process.
- b) *Working days* are office business days for HCRRA staff.
- c) A *solicitation phase protest* is received prior to the proposal opening or the proposal due date.
- d) An *award phase protest* is a protest received after the bid opening or proposal due date.
- e) The *protest authority* is the employee assigned to review the individual protest decision.
- f) The *offeror* is the bidder or proposer responding to a solicitation request.

Procedure

Protests must be filed and processed according to the methods and timetables outlined below.

Responsible Party Required Actions

Protester

1. Files written protest with the HCRRA contact person designated in the solicitation document.
 - a) Offerors are cautioned that the HCRRA may choose to continue with the given procurement, based on business needs.
 - b) Protests may be filed on the following bases:
 - Offerors or parties who may have an interest in the potential outcome of a protest or a procurement decision may file a solicitation phase protest if a bid or proposal specification or condition is incorrect or inappropriate; or
 - **Offerors may file an award phase protest if the purchase was awarded inappropriately or unfairly.**
 - A reconsideration of a protest decision may be requested after a decision has been rendered **only** if data becomes available that was not previously known or if there has been an error of law or regulation.
 - All protests must be in writing. HCRRA will not respond to verbal protests.
 - c) The protest must specify the following:

- The protester's name, the protester's company name, address, and phone and fax numbers.
- The project name and number and the contract number or other solicitation identifier.
- A complete and accurate identification of the grounds for protest, including references to any and all laws, regulations, or other legal authority that the protester claims were violated.
- A presentation of any and all evidence known to support any allegations of protest including but not limited to the names of the persons involved, a description of relevant occurrences, the documents upon which the protester relied, the particular language in the solicitation documents which is alleged to be defective or illegal, and a description of the Proposer's material, component, or product which is adversely affected by allegedly defective or illegal language.
- Complete identification of the relief the protester is seeking.

d) Protest Filing Deadlines

- Solicitation phase protests must be filed no later than three (3) working days prior to the scheduled bid opening or the proposal due date.
- Award phase protests must be filed within five (5) working days of HCRRA action, for those items which by policy require HCRRA action, or within five (5) days of the award for those items not requiring HCRRA action.
- Requests for reconsideration must be filed within five days of the protest decision.
- Failure to file a protest within the time period indicated shall result in waiver of the protest.

Designated Contact Person

2. Reviews the protest and:

- e) Reports the protest filing to the Deputy Executive Director of the Hennepin County Regional Railroad Authority or designee thereof and
- f) If the protest is a Solicitation Phase Protest, determines if the scheduled bid opening date/proposal due date should be extended to allow for resolution of the protest and, if so, issues an addendum to all offerors.
- g) Notifies funding authorities (such as the FTA) upon protest filing and as required by rule or regulation. Notification to FTA will include a brief description of the protest, the basis of disagreement, the status of the protest, and whether an appeal has been taken or is likely to be taken.

- h) Decide if the protest has an impact on other offerors. If the protest does have an impact on other offerors, notify them.

Protest Authority

- 3. Render a written decision that addresses, in detail, each substantive issue raised in the protest. The decision must be issued and appropriate action must be taken as quickly as possible but no later than ten (10) working days after the filing of the protest.

HCRRRA Protest Authority - Deputy Executive Director of the Hennepin County Regional Railroad Authority or designee thereof

Protester

- 4. If the protester feels the protest decision is not valid, based on new information not previously known or an error of law or regulation, s/he may seek reconsideration within 5 working days through a written request filed with the protest authority.

Protest Authority

- 5. Reconsideration of a protest decision:
 - i) Determine if the grounds for reconsideration are valid.
 - j) If the grounds are deemed valid, render a decision.
 - k) If the grounds are deemed invalid, reject the reconsideration request.

Protest Authority or Designee

- 6. Convey the final decision to protester and to other agencies, as required.

Records Retention

All protest-related documents must be retained for ten (10) years.

Questions

Questions regarding this policy may be directed to the Deputy Executive Director of the Hennepin County Regional Railroad Authority or designee thereof.

Deviations

In appropriate circumstances, the protest authority may extend the stated deadlines. No other deviations are allowed.