

# MINNESOTA STATE

## SECTION 00 45 36

### MINNESOTA DEPARTMENT OF HUMAN RIGHTS

#### PART 1 GENERAL

##### 1.1 SUMMARY

Section Includes:

1. Administrative requirements for Workforce Certification, Equal Pay Certification, and Workforce participation under equal employment opportunity.
2. Procedures and requirements for affirmative action compliance.

Related Sections:

1. Section 00 72 00 – General Conditions of the Contract for Construction
2. Section 00 73 46 – Prevailing Wage Rate Requirements and Project Specific Wage Rates

##### 1.2 WORKFORCE AND EQUAL PAY CERTIFICATES OF COMPLIANCE

- A. It is hereby agreed between the parties that MN Statutes, Section 363A.36 and MN Rules, Parts 5000.3400 to 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it.

Workforce and Equal Pay Declaration Page

1. For all contracts estimated to be in excess of \$100,000, responders are required to complete the State of Minnesota – [Workforce and Equal Pay Declaration Page](#) and submit it with their response.
2. **A copy of the Workforce and Equal Pay Declaration Page is attached as an appendix following this section 00 45 37 for reference purposes.**
3. **A copy of the contractor's Workforce or Equal Pay Certification(s) must be submitted with the bid, as applicable.**
4. As required Minnesota Rule 5000.3600," It is hereby agreed between the parties that Minn. Stat. §363A.36 and Minn. R.5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it". A copy of Minn. Stat. § 363.36 and Minn. R.5000.3400 - 5000.3600 are available upon request from the contracting agency."

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5. For all contracts estimated to be in excess of \$100,000, responders must obtain a Workforce Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to executing a contract. This certification requires employers to actively work to hire, train, promote, and retain people of color, Indigenous people, women, and/or people with disabilities to ensure that Minnesota's workforce reflects Minnesota's demographics. A responder is exempt if it has not employed more than 40 full-time employees on any single working day in one state during the previous 12 months. Please contact MDHR with questions at 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at [compliance.MDHR@state.mn.us](mailto:compliance.MDHR@state.mn.us).
  
6. For all contracts estimated to be in excess of \$500,000, responders must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to executing a contract. This certification requires employers to pay men and women equal wages for equal work. A responder is exempt if it has not employed more than 40 full-time employees on any single working day in one state during the previous 12 months. Please contact MDHR with questions at 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at [compliance.MDHR@state.mn.us](mailto:compliance.MDHR@state.mn.us).

**1.3 NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

1. The offeror's or bidder's attention is called to the "equal opportunity clause" set forth herein.
  
2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

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WORKFORCE GOALS		
Counties	People of Color and Indigenous People	Women
<b>Hennepin and Ramsey</b>	32%	20%
<b>Anoka, Carver, Dakota, Scott, and Washington</b>	22%	15%
<b>Central Minnesota:</b> Benton, Chisago, Isanti, Kanabec, Kandiyohi, McLeod, Meeker, Mille Lacs, Pine, Renville, Sherburne, Stearns, Wright	15%	12%
<b>Southwest Minnesota:</b> Big Stone, Blue Earth, Brown, Chippewa, Cottonwood, Faribault, Jackson, Lac Qui Parle, Le Sueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Swift, Waseca, Watonwan, Yellow Medicine	15%	9%
<b>Southeast Minnesota:</b> Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmstead, Rice, Steele, Wabasha, Winona	15%	9%
<b>Northeast Minnesota:</b> Aitkin, Carlton, Cook, Itasca, Koochiching, Lake, St. Louis	12%	9%
<b>Northwest:</b> Becker, Beltrami, Cass, Clay, Clearwater, Crow Wing, Douglas, Grant, Hubbard, Kittson, Lake of the Woods, Mahnommen, Marshall, Morrison, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stevens, Todd, Traverse, Wadena, Wilkin	12%	9%

These goals are applicable to all the contractor’s construction work (whether or not it is state or state-assisted) performed in the covered area.

The contractor’s compliance with MN Statutes, Section 363A.36 and part 5000.3520 shall be based on its implementation of the equal opportunity clause, specific affirmative action obligations required by the specifications in part 5000.3540, and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each tract, and the contractor shall make a good faith effort to employ minorities evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor’s goals shall be a violation of the contract, MN Statutes,

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Section 363A.36 and part 5000.3520. Compliance with the goals will be measured against the total work hours performed.

3. The contractor must provide written notification to the Compliance Division of the Minnesota Department of Human Rights within 10 (ten) working days of award of any construction subcontract at any tier for construction work under the contract resulting from the solicitation. The notification must list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract, and the geographical area in which the contract is to be performed.
4. As used in this notice, and in the contract resulting from this solicitation, the “covered area” is the geographical area where the contract is to be performed. The contracting state agency shall insert the description of the geographical areas where the contract is to be performed describing the State, County, City, Town, or Municipality of the geographical area in this notice and in the contract resulting from this solicitation.
5. Goals are available on Minnesota Department of Human Rights website at [Workforce Goals / Minnesota.gov \(mn.gov\)](#) and are incorporated by reference.
6. As of July 17, 2017, Workforce goals apply to contracts in excess of \$100,000 per the table below. If there is a discrepancy between the table below and the Workforce Goals published on the <https://mn.gov/mdhr/certificates/workforce-goals/> website, then the website goals shall govern.

For more information, contact Minnesota Department of Human Rights at [compliance.mdhr@state.mn.us](mailto:compliance.mdhr@state.mn.us) or call 651-539-1095.

7. To ensure contractors are making good faith efforts to meet Workforce Goals, MDHR requires contractors to complete a [Preconstruction Packet](#) before a construction project begins and submit [Monthly Project Reports](#) throughout the project. Minnesota State reserves the right to withhold payment until the contractor submits the Preconstruction Packet or if the contractor fails to submit Monthly Project Reports in a timely manner.

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#### 1.4 STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY

##### A. Construction Contract Specifications.

1. The contractor must implement the specific affirmative action standards provided in paragraphs 4.a. through o. of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor shall be reasonably be able to achieve in each construction trade in which it has employees in the covered area. The contractor shall make substantially uniform progress toward its goals in each craft during the period specified.
2. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specification, Minnesota Statutes, Section 363A.36 of the Minnesota Human Rights Act, of the rules adopted under the act.
3. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained according to training programs approved by the Minnesota Department of Human Rights, the Minnesota Department of Labor and Industry, or the United States Department of Labor.
4. The contractor must take specific affirmative action to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications must be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Make a good faith effort to maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's

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obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, address, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If the individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.
- d. Provide immediate written notification to the commissioner of the Minnesota Department of Human Rights when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the State of Minnesota. The contractor shall provide notice of these programs to the sources compiled under b.
- f. Disseminate the contractor's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in

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the company newspaper, annual report etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company equal employment opportunity policy on bulletin boards accessible to all employees at each location where construction is performed.

- g. Review, at least annually, the company's equal employment opportunity policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assigning, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the first day of construction work at any job site. A written record shall be made and subject matter discussed and disposition of the subject matter.
- h. Disseminate the contractor's equal employment opportunity policy externally by including it in an advertising in the news media, specifically including minority and female news media, and providing written notification to and discussion the contractor's equal employment opportunity policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later the one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women, and where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

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- k. Conduct, at least annually an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek to prepare for, through appropriate training, such opportunities.
  - l. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the contractor's obligations under these specifications are being carried out.
  - m. Ensure that all facilities and company activities are non-segregated except the separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - n. Document and maintain a record of all solicitations of offers for subcontract from minority and female construction contractors and suppliers, including circulation of solicitation to minority and female contract associations and other business associations.
  - o. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's equal employment opportunities policies and affirmative action obligations.
5. Contractors are encouraged to participate in voluntary associations that assist in fulfilling one or more of their affirmative action obligations 4.a. to o. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 4.a. to o. of these specifications provided that the contractor actively participates in the group, make every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply shall not be defense for the contractor's noncompliance.



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6. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of part 5000.3520 if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women general, the contractor may be in violation of part 5000.5320 if a specific minority group of women is underutilized).
7. The contractor must not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, creed, religion, sex, national origin, and marital status, status with regard to public assistance, disability, age, or sexual orientation.
8. The contractor must not enter into any subcontract with any person or firm debarred from government contracts under the federal Executive Order 11246 or a local human rights ordinance, or whose certificate of compliance has been suspended or revoked pursuant to Minnesota Statutes 363A.36.
9. The contractor shall carry out such sanctions for violation of these specifications and of the equal opportunity clause, including suspension, termination, and cancellation of existing contracts as may be imposed or ordered pursuant to Minnesota Statutes, 363A.36, and its implementing rules. Any contractor who fails to carry out such sanctions shall be in violation of these specifications and Minnesota Statutes, Section 363A.36.
10. The contractor, in fulfilling its obligations under these specifications, must implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 4 so as to achieve maximum results for its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirement of Minnesota Statutes, Section 363A.36, its implementing rules, or these specifications, the commissioner shall proceed in accordance with part 5000.3570.
11. The contractor must designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Minnesota Department of Human Rights, and to keep

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records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (for example, mechanic, apprentice trainee, helper, or laborer), dates of change in status, hours worked per week in the indicated trade, rate of pay and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

12. Nothing provided in this part will be construed as a limitation upon the application of other state or federal laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

#### 1.5 DISABLED PERSONS AFFIRMATIVE ACTION CLAUSE

##### A. Affirmative Action for Disabled Workers

- a) The contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to make affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b) The contractor agrees to comply with the rules and relevant order of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- c) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be take in accordance with Minnesota Statutes, Section 363A.36, and rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

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- d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
  
- e) The contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contract is bound by the terms of Minnesota Statutes, Section 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

**END OF SECTION**