MINNESOTA STATE
SECTION 00 45 36

NOTICE TO BIDDERS
AFFIRMATIVE ACTION CERTIFICATE OF COMPLIANCE

Minnesota State intends to carry out its responsibility for requiring affirmative action by its CONTRACTORS.

a. Covered Contracts and CONTRACTORS. If the contract exceeds One Hundred Thousand and 00/100 Dollars ($100,000.00) and the CONTRACTOR employed more than forty (40) full-time employees on a single working day during the previous twelve (12) months in Minnesota or in the state where it has its principle place of business, then the CONTRACTOR must comply with the requirements of Minnesota Statutes §363A.36 and Minnesota R. Parts 5000.3400-5000.3600. A CONTRACTOR covered by Minnesota Statutes §363A.36 because it employed more than forty (40) full-time employees in another state and the CONTRACTOR does not have a Certificate of Compliance, said CONTRACTOR must certify that it is in compliance with federal affirmative action requirements.

b. Minnesota Statutes §363A.36. Minnesota Statutes §363A.36 requires CONTRACTOR to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (hereinafter COMMISSIONER) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

c. General. Minnesota R. 5000.3400-5000.3600 implement Minnesota Statutes §363A.36. These rules include, but are not limited to: criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a CONSULTANT’s compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minnesota R. 5000.3400-5000.3600, including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

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

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 listed in the "Revised Affirmative Action Participation Goals for Minorities and Women in State Construction Projects", as follows.
REVISED AFFIRMATIVE ACTION PARTICIPATION GOALS FOR MINORITIES AND WOMEN IN STATE CONSTRUCTION PROJECTS

**Timetables:** Upon publication, effective April 4, 2012 until further notice.

**Goals** for participation of minorities in each trade are divided into six areas:

### Minnesota Metropolitan Area

<table>
<thead>
<tr>
<th>Area</th>
<th>Minorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hennepin and Ramsey</td>
<td>32%</td>
</tr>
<tr>
<td>Anoka, Carver, Dakota, Scott and Washington</td>
<td>22%</td>
</tr>
</tbody>
</table>

### Central MN

Benton, Chisago, Isanti, Kanabec, Kandiyohi, McLeod, Meeker, Mille Lacs, Pine, Renville, Sherburne, Stearns, Wright

### Southwest MN

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

### Southeast MN

Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha, Winona

### Northeast MN

Aitkin, Carlton, Cook, Itasca, Koochiching, Lake, St. Louis

### Northwest MN

Becker, Beltrami, Cass, Clay, Clearwater, Crow Wing, Douglas, Grant, Hubbard, Kittson, Mahnomen, Lake of the Woods, Marshall, Morrison, Norman, Otter Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stevens, Todd, Traverse, Wadena, Wilkin

**Goal** for participation by women in each trade in all counties is 6%.

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 Minnesota 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 trade, and the contractor must make a good faith effort to employ minorities and women 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 is a violation of the contract, Minnesota Statutes, 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 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.

DISABLED PERSONS AFFIRMATIVE ACTION CLAUSE

(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 take 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 taken in accordance with Minnesota Statutes, section 363A.36 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(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 contractor 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.

STANDARD STATE EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS
1. The contractor must implement the specific affirmative action standards provided in paragraphs 4(a) to (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 must reasonably be able to achieve in each construction trade in which it has employees in the covered area. The contractor must 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 specifications, Minnesota Statutes, section 363A.36 of the Minnesota Human Rights Act, or 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 must 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 must 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 must document these efforts fully, and must 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 must specifically ensure that all lead supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor’s obligation to maintain such a working environment, with specific attention to minority or female persons 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 person. If the person 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 must 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 must 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 the contractor in meeting its equal employment opportunity obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in 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 work 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, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general lead supervisors, etc., prior to the first day of construction work at any job site. A written record must be made of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(h) Disseminate the contractor’s equal employment opportunity policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing 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 than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source the contractor must 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.

(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 nonsegregated except that 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 subcontracts from minority and female construction contractors and suppliers, including circulation of solicitation to minority and female contractor 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 opportunity policies and affirmative action obligations.

5. Contractors are encouraged to participate in voluntary associations which 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, makes 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, however, is the contractor’s and failure of such a group to fulfill an obligation must not be a defense for the contractor’s noncompliance.

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 nonminority. 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 generally, the contractor may be in violation of part 5000.3520 if a specific minority group of women is under-utilized).

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, marital status, status with regard to public assistance, disability, sexual orientation, or age.

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, section 363A.36.

9. The contractor must 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, section 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 from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of Minnesota Statutes, section 363A.36, its implementing rules, or these specifications, the commissioner must 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 records. Records must 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 changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed.

Records must be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors must not be required to maintain separate records.

12. Nothing herein provided in this part shall 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.

END OF SECTION