

**INNOVATIVE CONTRACTING PRACTICES
SPECIAL EXPERIMENTAL PROJECT NO. 14**

**BEST VALUE AWARD IN DESIGN-BID-BUILD
I-35W Lake Street Project
Minnesota Department of Transportation
Metro District**

September 6, 2016

Introduction and Purpose

The Minnesota Department of Transportation (MnDOT) is planning a major project to reconstruct I-35W just south of downtown Minneapolis. The structures in this area are in need of replacement and the roadway is in need of geometric and other improvements. The preliminary estimate for this project is roughly \$250 million dollars and it involves a significant amount of all major work types: grading, paving, bridge, retaining wall, etc. It is anticipated that construction on this corridor will last for four construction seasons (2017 through 2020). More project details can be found on the project website:

<http://www.dot.state.mn.us/metro/projects/i35wminneapolis/>

MnDOT is preparing the project for a Design-Bid-Build (DBB) letting in the spring of 2017. (Please note that Design-Build delivery had been considered for the project, but there were many environmental and other restrictions for which MnDOT felt it needed to maintain control of the design and at least one local partner was not comfortable with the use of the Design-Build delivery method) The DBB plans are near completion at this time; however, there are several project risks and opportunities that will carry into the construction of the project that cannot be addressed with a simple low bid letting. Therefore, MnDOT feels it would be advantageous to use a limited number of Best Value scoring criteria to address these risks and opportunities. The criteria utilized will be similar to those commonly used in MnDOT's Design-Build program, but they will only be applied to portions of the project that are under the contractor's control within the Design-Bid-Build delivery method.

Several public agencies have submitted similar SEP-14 applications to utilize Best Value scoring criteria on DBB projects; Michigan in particular utilized a very similar structure for their M-39 project in 2010 and M-115 project in 2008. This application uses Michigan's M-39 application as a template. The (positive) final reports from both projects are located at the following links:

M-39:

SEP-14 Application: http://www.fhwa.dot.gov/programadmin/contracts/sep14_mi_m39.pdf.

Final Report: <http://www.fhwa.dot.gov/programadmin/contracts/sep14m392012.pdf>.

M-115:

SEP-14 Application: <http://www.fhwa.dot.gov/programadmin/contracts/sep14mi115.cfm>.

Final Report: <http://www.fhwa.dot.gov/programadmin/contracts/sep14mifinal2009.cfm>.

Project Risks

The following notable risks and opportunities have been identified on the I-35W Lake Street project:

1. General Construction Impacts

- a. Air quality, the extent of dust and debris, and the need for thorough and timely contractor clean-up during and after the project is complete.
- b. Noise, both the regular noise of traffic, and concerns about the hours of operations and construction noise, especially late at night.
- c. Restricting construction truck traffic on neighborhood streets.
- d. Maintaining water pressure and other utilities to homes during construction.
- e. Avoiding damage to adjacent property from vibration and heavy construction work, and fixing damage that does occur.
- f. Maintaining local access and minimizing impacts to all affected businesses.
- g. The timeliness and quality of Contractor communication with MnDOT and all affected groups.

2. Diversity and Inclusion. A project of this size and scope allows for creation of jobs and gives MnDOT a unique opportunity to ensure that contractors are taking into consideration female and minority populations that are currently underrepresented in the construction industry as it relates to employment. MnDOT will require contractors to review and identify the underrepresentation in their internal workforce prior to the project start date in order for them to create and implement a meaningful plan to target and recruit underrepresented populations across the greater metropolitan area.

MnDOT will also incorporate several race-neutral measures as part of a small business inclusion plan that enables small business participation. These measures are designed to eliminate barriers that small businesses traditionally face and facilitate the relationship between the prime contractor and its small business subcontractors.

3. Risk Management. MnDOT finds that the most successful construction projects are the ones for which the contractor considers risks and proactively creates contingency plans for events with significant probabilities of occurrence. For example, on the 35W Lake Street project the water table elevation is naturally high, many activities require excavation, and high-volume rainfall events have been increasing in frequency. The presence of a contractor who is able to plan ahead for water-related, and other, risks will result in a more successful project than a contractor who simply deals with problems as they occur. Good contractors and, more specifically, good personnel have real value in the risk mitigation and change management areas.

4. Schedule Concerns. I-35W and I-94 are the most heavily used roadways in Minnesota and their operations will be significantly impacted by the project. Furthermore, the project will have large impacts to the local road system, transit operations, and local businesses and residences in general. Therefore, it will be necessary to complete critical connections as quickly as possible while being sensitive to the amount and duration of work occurring near residential areas. If one contractor is able to commit to completing certain links more quickly than another contractor (while minimizing impacts to locals) this would have real value to MnDOT and the public at large.

Scope

The Scope of this application is to utilize a Best Value award structure with the 35W Lake St DBB project, which varies from the standard low-bid process specified in the CFR. The contractor will be asked to commit to specific personnel, processes, and durations which will increase the quality and overall value of the project to MnDOT and its partners.

MnDOT proposes to select the contractor using a Best Value procurement process. The contract will be awarded to the bidder who proposes the best value as determined by a formula which will weight roughly 15% toward a Technical Score and 85% to the Price Proposal (the final balance is yet to be determined but is unlikely to vary significantly). MnDOT will develop a specification, based on MnDOT's DB specifications, which will require a contractor to submit a separate Technical Proposal in which the bidder articulates how they will address each of the project performance criteria. The Technical Proposal will be submitted and evaluated prior to opening the contractor's Price Proposal. A methodology will be developed and included in the specification that explains how the bidder's Technical Proposal will be evaluated for each of the criteria. The bidder's Price Proposal will remain a unit price proposal, with the total sum of the extended unit prices used in the formula to determine the Best Value proposer.

Measures

The effectiveness of the Best Value contract selection process will be measured by:

1. The number of responsive proposals (i.e. was industry willing and able to successfully respond to this type of contract?).
2. The quality of the technical proposals.
 - a. The quality of the proposal as directly compared to the ranges outlined in the evaluation.
 - b. The overall number of innovative ideas proposed by all bidders to respond to the project performance criteria.
3. Analysis of the overall selection process.
 - a. The number and severity of issues identified during the execution of the selection process. Major and minor issues will be analyzed separately.
 - b. The comparison of Price Proposals to the Engineer's Estimate.

Reporting

MnDOT will prepare two reports for this SEP-14 proposal. An interim report will be prepared shortly after contract award and will address the Best Value selection process and results. A final report will be prepared within six months after completion of the project work and will address the entire project and all evaluation measures.

MnDOT will compare the findings of our SEP-14 proposal to the final report of the 2010 M-39 project in Michigan, which had a nearly identical scope (and which was used as the template for this application). Note that the M-39 project itself was patterned after a 2008 M-115 project in Clare County, Michigan, which claimed good results from a similar Best Value award process.

S-1

(1301) CONSIDERATION OF PROPOSALS AND TECHNICAL COMMITMENTS (BEST VALUE METHOD)

S-X.1 GENERAL

The Department will award this contract to the responsible and responsive Bidder that offers the best-value to the Department as defined by this specification. The lowest responsible Bidder will be determined using both the Bidder's Proposal and Technical Component score.

After opening Proposals, the Department will compare the Proposals based on the correct summation of the products of the scheduled quantities and unit bid prices. If the lowest responsible Bidder has submitted prices on more than one alternate item, the Department reserves the right to determine which alternate to accept. If the extended bid item price, obtained by multiplying the unit bid price by the bid item quantity, is incorrectly calculated, the Department will use the unit bid price to recalculate the extended bid item price.

The Department will not consider Proposals that do not include a Proposal Guaranty in accordance with 1208, —Proposal Guaranty.

The Department reserves the right to:

- (1) Reject any or all Proposals or Technical Components,
- (2) Waive deficiency or informality in a Proposal or Technical Component, or
- (3) Advertise for new Proposals or Technical Components.

A Two Phase Bidding Process will be utilized to allow for the scoring of Technical Components prior to the submission of Proposals.

S-X.2 PROJECT GOALS

The goals of this Project are as follows:

- Provide a safe work environment for workers and the public.
- Complete all project stages and closures within the planned timeframes and achieve Substantial Completion on schedule.
- Minimize disruption to all modes of transportation including vehicular traffic, transit operations, bicycle traffic, pedestrian traffic, and others.
- Utilize high-quality design and construction practices to achieve durable and high-quality products.
- Avoid or minimize construction-related impacts to nearby residents, businesses, parks, and the local quality of life in general.
- Recognize local community challenges and take advantage of appropriate opportunities to improve their quality of life.

- Fully satisfy environmental and permit requirements.
- Proactively manage risk and encourage innovative ideas to help achieve the above goals.

S-X.3 DEFINITION OF TERMS

For this Project the following definitions apply:

- Evaluation Committee – A panel of at least three individuals selected by the Department to review the contents of the Technical Component.
- Key Personnel – The individuals listed in the Technical Component to meet the Proposal Package requirements.
- Proposal – As defined in Standard Specification 1103. The Proposal includes the Bidder’s response to the cost requirements of the Proposal Package and is separate from the Technical Component.
- Scoring Criteria – The criteria which define the narratives, procedures, and commitments required in the Technical Component that will be scored as indicated to determine the Bidder’s technical score for the purposes of calculating the lowest responsible Bidder.
- Small Business – As defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR §26.65(b).
- Technical Component– A Bidder's response to the Scoring Criteria contained in this Specification 1301. This is separate from the Proposal, which remains as defined in Standard Specification 1103. All commitments made in a Technical Component are binding contractual commitments.
- Two Phase Bidding Process – A two phase process consisting of a first phase in which Bidders submit Technical Components to be evaluated by the Department, and a second phase in which those Bidders whose Technical Components are deemed responsive during the first phase have their Proposals considered.

S-X.4 SCHEDULE

The following is the procurement schedule for this Contract.

PROCUREMENT SCHEDULE	
Advertisement	April 13, 2017
Procurement Informational Meeting	April 20, 2017
Technical Component Due Date	May 19, 2017
Letting Date (Proposal Due Date)	June 7, 2017
Public Opening Date	June 7, 2017

S-X.5 TECHNICAL COMPONENT SUBMISSION

The Technical Components must be submitted by the prime contractor and received by the Department **no later than 9:30 a.m. Central Time on the Technical Component Due Date**. Time of receipt by the Department will be determined by time that a complete submission was accepted by the Department's email server. The Technical Component must be submitted as a single package that is no larger than 50 MB; make certain to allow sufficient time for transmission. Note that the Department's email server may accept an emailed Technical Component submission even after the deadline for the submission has passed. Regardless, any Technical Component received after the deadline will be considered non-responsive and will not be reviewed or considered. Bidders with an email system that supports "Request a Delivery Receipt" are advised to utilize that function. Mailed or hand delivered Technical Components will not be accepted.

The Technical Component must be e-mailed in pdf format to:

Peter Davich
Design-Build Program Manager
Minnesota Dept. of Transportation
peter.a.davich@state.mn.us

The Technical Component must include a cover page with:

- 1) The name of the project
- 2) The words "Technical Component"
- 3) The Bidder's name
- 4) The date of Technical Component submission

The Technical Component shall include an executive summary, which must contain:

- 1) Sufficient information to familiarize reviewers with the Bidder's ability to satisfy the technical requirements of this Project.
- 2) The name, address, phone number, and e-mail address of the Bidder's sole point of contact for the Project. This point of contact must be available to answer questions regarding the contents of the Technical Component during business hours and is responsible for transmitting and receiving information as necessary.
- 3) A statement certifying the truth and correctness of the Technical Component.
- 4) The signature of an authorized representative(s) of the Bidder's organization. If the Bidder is a joint venture, the joint venture members must sign the letter.

The Technical Component must include all information required by the Scoring Criteria.

The Technical Component must not exceed 15 single-sided pages, not including the cover page and executive summary. Any graphics, resumes, or other pages added to enhance the Technical Component count against this page limit with the sole exception of Appendix A. All pages counting against the limit must be numbered. The Technical Component must be organized to correspond to and address the content requirements of the Scoring Criteria.

One Appendix (Appendix A) must be submitted with the Technical Component. Appendix A must contain the following completed items as required in the Scoring Criteria. Appendix A must not contain any other information. Required items:

- 1) Total Company Workforce Tool
- 2) MnDOT Underutilization Analysis Tool
- 3) Targeted Recruitment List

All information must be designed to print on 8.5" x 11" paper. Text must not be less than 0.10 inches in maximum height (i.e. the height of a capital letter). This is roughly equivalent to 11-point, Times New Roman font. All dimensional information, if any, must be provided in English units.

The Technical Component **must not contain price information of any kind**. Any Technical Component submitted with price information will not be accepted.

S-X.6 SCORING CRITERIA

The Technical Component must include narratives and other information as described in this section. Any commitments made in response to this section are binding contractual commitments. The maximum relative points in the technical scoring are shown in parenthesis. The Department will evaluate the Technical Component based on the information provided by the Bidders in response to these criteria.

1) Risk Understanding and Mitigation Approach (24 points)

Provide a narrative demonstrating the Bidder's understanding of the 5-8 most significant risks that may prevent the successful achievement of one or more project goals. These discussed risks must include the following two plus others as observed by the Bidder:

- a) "Neighborhood relations" including noise impacts, access restrictions, property damage, etc.
- b) "Ground water control" as related to the high water table within the project limits.

Provide a second narrative describing the Bidder's approach to managing and mitigating the identified risks. Provide specific commitments to mitigate the risks and better meet the project goals.

The Department will evaluate the depth of the Bidder's Project understanding and the effectiveness of the approach and commitments to meeting the Project goals.

2) Diversity and Inclusion (12 points)

Complete the Total Company Workforce Tool and, subsequently, the MnDOT Underutilization Analysis Tool. Using this information, provide a narrative that compares the Bidder's anticipated workforce in Minnesota to the available workforce in the metropolitan statistical area analyzed. If the Bidder does not have a permanent workforce established in Minnesota, complete the Tool using the Bidder's anticipated workforce for this project. If the Bidder is submitting as a Joint Venture, all members of the Joint

Venture must complete the Tools. All subcontractors known at the time of Technical Component submission must also complete the Tools.

Specifically identify the trades/areas for which the Bidder has a low representation of minority or female individuals and compare it with the trades/areas identified as underutilized in the metropolitan statistical area. Complete the attached Targeted Recruitment List after identifying the underutilized trades/areas.

Provide a narrative describing the Bidder's approach to increasing minority and female representation in the trades where low representation levels were identified as well as strategies to retain these employees over the life of the project. The approach should address how representation will be increased or maintained within the Bidder's organization. Explain how the Bidder will recruit from the Targeted Recruitment List and commit to both methods of outreach and planned activities (such as job fairs, "meet and greets", etc.) as appropriate. Commit to a timeline for these activities.

The Department will evaluate the accuracy and comprehensiveness of the Bidder's analysis and the effectiveness of the approach and commitments to hiring and maintaining minority and female members of the Bidder's workforce. This criterion is separate from the evaluation of the Pre-Construction Workforce Planning Document goal and commitment as required elsewhere in this Contract. The evaluation of the goal will have no effect upon the scoring of this criterion and, alternatively, the scoring of this criterion will have no effect upon the evaluation of the goal. Similarly, a Bidder's pre-Project level of minority and female representation will not be evaluated; this criterion addresses only efforts made during the life of the Project.

3) Small Business Contracting (10 points)

Provide a Small Business Inclusion Plan that addresses the Bidder's approach to breaking out smaller portions of work conducive to the inclusion of Small Businesses and the elimination of traditional barriers to their successful participation. This Plan must include approaches to:

- a) Identifying the plans, specifications, and requirements of the contract that will be provided to Small Businesses to enable their participation;
- b) Identifying interested small Business contractors and suppliers including, but not limited to, hosting business matchmaking events, advertising opportunities, and conducting market research;
- c) Communicating Small Business opportunities that arise during the construction of the project;
- d) Mentoring Small Businesses;
- e) Assisting Small Business overcome challenges to inclusion including, but not limited to, obtaining bonding, lines of credit, insurance, equipment, supplies, materials, etc.;
- f) Incorporating Small Business development organizations and business associations into the effort to solicit Small Businesses;
- g) Ensuring prompt payment to Small Business subcontractors following the receipt of payments from the Department, including methods to make these

- payments visible to the Department if possible; and
- h) Dispute resolution with Small Business subcontractors in the event of contract performance issues, including the role of retainage.

The Department will evaluate the effectiveness and transparency of the Bidder's approach to Small Business inclusion and the elimination of traditional barriers to their successful participation.

4) Key Personnel

a) Project Manager (10 points)

The Project Manager will be responsible for overall Project completion including construction quality, schedule adherence, and other contract administration. This person will have full responsibility for the prosecution of the work, act as a single point of contact in all matters, and have authority to represent the Contractor on all matters relating to the Project.

- Must have 5 years recent experience managing the construction of projects of similar scope and complexity, or must have served in this same capacity on two similar completed projects. A record of successful projects that met their goals preferred. Additional experience beyond the minimums preferred. Highly similar experience preferred.

b) Grading Construction Manager (6 points)

The Grading Construction Manager will be responsible for ensuring that the Project grading is constructed in accordance with the Project requirements. Must work under the direct supervision of the Project Manager.

- Must have 5 years recent experience managing the construction of grading projects of similar scope and complexity. A record of successful projects that met their goals preferred. Additional experience beyond the minimum preferred. Highly similar experience preferred.

c) Bridge Construction Manager (6 points)

The Bridge Construction Manager will be responsible for ensuring that the Project structures are constructed in accordance with the Project requirements. Must work under the direct supervision of the Project Manager.

- Must have 5 years recent experience managing the construction of bridge projects of similar scope and complexity. A record of successful projects that met their goals preferred. Additional experience beyond the minimum preferred. Highly similar experience preferred.

d) Maintenance of Traffic Manager (6 points)

The Maintenance of Traffic (MOT) Manager will be responsible for ensuring that the maintenance of traffic designs, including Temporary Pedestrian Access

Routes (TPAR), are executed in accordance with Contract requirements. The Maintenance of Traffic Manager will occasionally be asked to review construction in the field. The MOT Manager must work under the direct supervision of the Project Manager. The MOT Manager may also fill the Traffic Control Supervisor position.

- Must have 5 years recent experience executing maintenance of traffic and TPAR plans on projects of similar scope and complexity. A record of successful projects that met their goals preferred. Additional experience beyond the minimum preferred. Highly similar experience preferred.

e) **Equal Employment Opportunity (EEO) Officer (5 points)**

The EEO Officer will be responsible for effectively administering and promoting an active EEO program. The designated person must be assigned adequate authority to complete this work.

- Must have 1 year of recent experience administering the policies and procedures of a contractor's EEO program on large and complicated roadway projects. Additional experience beyond the minimums preferred. Highly similar experience preferred.

5) Local Impact (18 points)

Provide a narrative outlining the Bidder's approach to minimizing all construction-related impacts to local communities including noise, vibrations, and mobility disruptions with the exception of interstate access as evaluated in the "Schedule" criterion.

The Department will evaluate the effectiveness of the Bidder's commitments to reducing local impacts and maintaining their quality of life.

6) Schedule

Provide specific commitments with regards to:

- The maximum number of calendar days required for the full closure of TH 65 and the completion of all necessary work in Stage 2 of the Staging and Traffic Control Plans before TH 65 is safely reopened as shown in Stage 3 of the Traffic Control Plan.
- The maximum number of calendar days required for I-35W to be reduced to five lanes (2 SB/3 NB) and the completion of all necessary work in Stages 2 and 3 of the Staging and Traffic Control Plans before TH 65 and I-35W are safely reopened as shown in Stage 4 of the Traffic Control Plan.
- The maximum number of calendar days required for Westbound I-94 to be reduced to two lanes and the completion of all necessary work in Stages 2 and 3 of the Staging and Traffic Control Plans before Westbound I-94 is safely reopened as shown in Stage 4 of the Traffic Control Plan.

The Department will award points based on the following formula:

$$\text{Points Awarded} = \{[(\text{Maximum Time} - \text{Minimum Time}) - (\text{Proposed Closure} - \text{Minimum Time})] / (\text{Maximum Time} - \text{Minimum Time})\} * 10$$

where:

Maximum Time	=240 calendar days for the full closure of TH 65 =465 calendar days for the duration of the 5-lane configuration on I-35W =465 calendar days for the duration of the 2-lane configuration on I-94
Minimum Time	=120 calendar days for the full closure of TH 65 =232 calendar days for the duration of the 5-lane configuration on I-35W =232 calendar days for the duration of the 2-lane configuration on I-94
Proposed Closure	= The maximum total duration, in calendar days, of the stage or closure as committed by the Bidder. Proposed Closures cannot be less than the Minimum Closure length.

S-X.7 CONSIDERATION OF TECHNICAL COMPONENTS

Upon receipt of the Technical Components, the Department will conduct an initial review of the Technical Components for responsiveness to the requirements set forth above. Technical Components that are deemed not responsive at this initial review will be excluded from further consideration and the Bidder will be so advised. The Department will exclude from consideration any Technical Component that contains a major defect, as determined in the Department's sole discretion. The Department reserves the right to request clarification or supplemental information from Bidders at any time during the review and evaluation process. These requests may be used to determine if a Bidder is responsive or to explain information in the Technical Component. The Department has no duty to request clarification or supplemental information.

An Evaluation Committee will evaluate the contents of the Technical Components before the Proposals are submitted. The Department will evaluate each of the factors set forth in the Scoring Criteria to determine whether the Technical Component satisfies the content requirements of the Proposal Package and to determine the Technical Component's technical score. Each Technical Component will receive a maximum score of 1000 points. **A Technical Component will receive 873 points for being determined responsive by the Department. The Department will score the remaining 127 points in accordance with the Scoring Criteria.**

S-X.8 BEST VALUE SELECTION

On the letting date, the Department will determine the adjusted score for each Bidder, except in cases where Technical Components were found to be non-responsive. The adjusted score will be determined by dividing the Proposal price by the Technical Component's technical score. The Proposal will subsequently be reviewed for responsiveness. Unless all Proposals are rejected or the Department otherwise elects not to award the Contract, **the Contract will be awarded to the responsive and responsible Bidder with the lowest adjusted score, also known as the lowest responsible Bidder.** A determination of responsiveness or responsibility at this stage does not preclude a later determination of non-responsiveness or non-responsibility based on subsequent review of Bidder, Proposal, and Technical Component information.

S-X.9 KEY PERSONNEL

Unless otherwise Approved, the Contractor will be assessed a monetary deduction for Key Personnel who cannot meet the defined commitments to the Project, except for extenuating circumstances, such as the disability, death, retirement, or resignation of the employee.

The Contractor may be assessed a monetary deduction up to \$50,000 for each proposed person who does not remain on the Project for the completion of his or her particular function. Contractor may be in breach under the Contract if proposed personnel are removed from the Project and satisfactory replacements are not provided. Insufficient provision of proposed personnel may cause the Contractor to be considered in default as described in 1808 (Default and Termination of Contract)

For any changes in personnel, the Contractor shall submit the qualification summaries and resumes of the individual and obtain written Approval of the person's participation in the Project before his or her start of work.

The Contractor shall notify the Department in writing of any proposed changes to Key Personnel and shall include a detailed resume summarizing the items set forth above and elsewhere in the Contract Documents. No Key Personnel shall be replaced without the prior written Approval of the Department. The changes will only be Approved if the replacement Key Personnel are equally qualified or more qualified than the original Key Personnel.

S-X.10 PROTEST PROCEDURES

This section states protest procedures and remedies. Each Bidder, by submitting its Proposal, expressly recognizes the limit on its rights to protest as stated in this provision, including its subparts. By submitting a Proposal, Bidder also agrees to pursue a protest through these procedures and the Protest Official before seeking judicial review. These protest provisions are included expressly in consideration for Bidder's waivers and

agreements stated herein. Bidder's waivers and agreements are also consideration to each other Bidder for making the same waiver and agreements.

If a Bidder disregards, disputes, or does not follow the exclusive protest remedies set forth in these provisions, Bidder must indemnify, defend, protect, and hold harmless MnDOT, its officers, officials, employees, agents, representatives, and consultants from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result. The submission of a Proposal will be deemed Bidder's irrevocable and unconditional agreement with this indemnification obligation.

"Filed" is defined as being received by the Protest Official. The "Protest Official" is defined as:

Betsy Hayes, Materials Management Division, or designee
Department of Administration
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

The Protest Official will not hold an administrative hearing regarding a protest.

Protests Regarding Responsiveness or Contract Award

Except as excluded by this Section, a Bidder may protest a MnDOT determination regarding responsiveness, responsibility, or Contract award. A protest based on responsiveness or responsibility must be received no later than 5 Days after the date notice of this determination is provided, and a protest based on Contract award must be received no later than 5 Days after the award. Failure to file a protest by the deadline will constitute an unconditional waiver of the right to protest responsiveness, responsibility, or Contract award, except for a protest based on facts not reasonably ascertainable by the deadline.

Protests must be filed in writing by hand delivery to the Protest Official, and a copy must simultaneously be provided personally or electronically to MnDOT's Letting Supervisor.

A Bidder may protest a MnDOT determination that Bidder did not timely submit its Disadvantaged Business Enterprise (DBE) documents. The Protest Official, however, will not accept any other protests related to DBE program requirements or determinations. A determination that a Proposal or Bidder is non-responsive or non-responsible for failure to make good faith efforts to meet the DBE goal established for the Project is not subject to this protest process. A Contract award or non-award based on failure to make good faith efforts to meet the DBE goal or a failure comply with other DBE program requirements is not subject to this protest process. The DBE Special Provisions provide a Bidder's exclusive remedy to seek administrative reconsideration of good faith efforts determinations.

A protest about responsiveness, responsibility, or Contract award must state all of the grounds for the protest and include all facts and legal arguments in support of the protest. The protest must be both succinct and in sufficient detail to establish the merits of the

protest. Evidentiary statements, if any, must be supported by affidavit based on personal knowledge, except where stated to be based on information and belief.

MnDOT staff may file a written response to the protest with the Protest Official. If MnDOT elects not to submit a response, MnDOT will promptly submit a statement to that effect in writing to the Protest Official. MnDOT must simultaneously provide a copy of its response or statement to the Protester. The Protest Official will only consider, based on a preponderance of the evidence, whether MnDOT's determination of non-responsiveness, non-responsibility, or Contract award is arbitrary, capricious, unreasonable, or contrary to law. Within 14 Days after the Protest Official receives MnDOT's written response to the protest or statement that MnDOT elects not to respond, the Protest Official will make a recommendation to the Commissioner. The Protest Official may extend the 14-day period upon written notice of the extension to MnDOT and the Protestor.

The Protest Official will recommend that the Commissioner either affirm MnDOT's original determination or take remedial steps, if appropriate, to address the issues raised in the protest. Remedial steps may include, without limitation, withdrawing or revising the determination, issuing a new Request for Proposals, or taking other appropriate actions. The Protest Official's recommendation will be in writing and include the reasons for the decision. The Protest Official will furnish copies of the recommendation to the MnDOT Letting Supervisor and the Protestor.

The Commissioner will issue MnDOT's final decision within 10 Days of receiving the recommendation. The Commissioner's decision must state in writing the reasons for the decision, or incorporate those of the Protest Official. The Commissioner will deliver the written decision to the Protestor. The decision will be final and conclusive and not subject to legal challenge unless arbitrary, capricious, or contrary to law. MnDOT will not execute the Contract until at least seven Calendar Days after the award of the Contract. This timeline may be waived if all Bidders agree to the waiver.

All protests are undertaken at the Protester's expense, and the Protester is responsible for all costs related to the protest. In addition, if the protest is denied, the Protestor may be liable for MnDOT's costs reasonably incurred in defending against the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by MnDOT as a consequence of the protest. MnDOT will not be liable for damages to Protestor or to any participant in the protest, on any basis, express or implied.

S-2

(1504) COORDINATION OF CONTRACT DOCUMENTS

A requirement appearing in one of the Contract documents is as binding as though the requirement appears in all. If discrepancies exist between the Contract documents, the following order of precedence applies:

- (1) Addenda,
- (2) Special Provisions,
- (3) Project-Specific Plan Sheets,
- (4) Supplemental Specifications,
- (5) Standard Plan Sheets and Standard Plates,
- (6) Standard Specifications,
- (7) Technical Component

If discrepancies exist between dimensions in the Contract documents, the following order of precedence applies:

- (1) Plan dimensions,
- (2) Calculated dimensions,
- (3) Scaled dimensions.

The Department and Contractor shall inform each other as to any discrepancy or defect they discover. Neither the Contractor nor the Engineer shall take advantage of any discrepancy or defect. The Engineer will review the alleged discrepancy or defect to determine if a contract revision is necessary

The State of Minnesota, Department of Transportation "Standard Specifications for Construction", 2016 edition, shall govern, except where modified or amended by these Supplemental Provisions. All reference to other Specifications of AASHTO, ASTM, ANSI, AWWA, etc. shall mean the latest published edition available on the date of advertisement for bids. City of Minneapolis, Public Works Standard Plates are hereby incorporated into these Standard Supplemental Specifications. The Standard Plates and this Standard Supplemental Specifications for Construction of Public Infrastructure are available at the following web address: <http://www.ci.minneapolis.mn.us/publicworks/plates/index.htm>