



Minnesota Utility Contractors Association

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July 20, 2015

Kim Collins, Director
Office of Civil Rights
Minnesota Department of Transportation
395 John Ireland Blvd, M.S. 170
St. Paul Minnesota 55155

Dear Ms. Collins:

On behalf of the more than 130 member companies of the Minnesota Utility Contractors Association (MUCA), we are submitting comments regarding MnDOT's proposed DBE goal of 11.7% for the 2016-2018 term. We believe this goal was not developed in consultation with construction industry professionals and is not based in reality as the methodology uses assumptions, presumptions and inaccurate data and is therefore, not only unreliable, but unattainable.

From MnDOT's Executive Summary, page 6 'DBE List Method', it states "the numerator counts firms and the denominator counts establishments." In reading footnote (3) it clarifies "As a result, the denominator includes many establishments *that might not normally contract with MnDOT.*" As noted in the US DOT Guidelines (49 CFR 26.45 (b)) "Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBE's relative to all businesses ready, willing and able to participate on your DOT-assisted contracts." MnDOT's approach, by including establishments that do not normally contract with MnDOT, skews the actual numbers of businesses who do contract with MnDOT, thus making the entire calculation invalid.

In his July 10th presentation, Samuel Myers admitted he does not have any construction background, nor did anyone on his team. This fact alone should invalidate any outcomes determined.

MUCA believes part of the issue and resulting lack of ability to achieve the DBE goal is MnDOT's own system, such as the overly expensive and cumbersome CRLM reporting system, and the paperwork requirements, among many other inefficiencies. Until MnDOT engages all *relevant* parties (i.e. those involved and engaged in construction) in establishing the goal, rather than relying on academia with no industry knowledge, MnDOT will continue to miss its mark.

OUR MISSION

To promote the underground utility industry by providing safety training, continuing education, scholarships and legislative relations.

OUR VALUES

Honest Communications
Transparent Leadership
Authentic Engagement

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Samuel Myers also stated in the July 10th meeting that according to research, the relative availability of DBE's in Minnesota *has decreased*. In US DOT Guidelines (49 CFR 26.45 section (d) 1, subset (i)), it states one of the "types of evidence that must be considered" is "the current capacity of DBE's to perform work in your DOT-assisted contracting program, as measured by the volume of work DBE's have performed in recent years." MnDOT's own expert acknowledging that DBE availability has decreased in Minnesota does not support an increase in the goal.

Finally, as noted in US DOT Guidelines (49 CFR 26.45 section (f) 5, subset (ii)), it clearly states "Avoid imposing undue burdens on non-DBE's." MnDOT failed to reach a 10.3% goal in the last term, and with decreasing DBE availability, it does not make sense to increase the goal to 11.7%. *Simple logic dictates that setting the goal higher than what MnDOT already cannot achieve places an undue burden on non-DBE's.*

We recommend the goal be adjusted to 10% (an attainable number) and that MnDOT's focus extends to:

- 1). Increasing the pool of DBE's;
- 2). Engaging the construction industry in MnDOT's process of goal setting;
- 3). Abandoning the CRLM system in favor of a less expensive, more user friendly system, such as the Labor Compliance Program used by the City of St. Paul.

Thank you for your consideration.

Sincerely,



Stephanie Menning, CAE, IOM
Executive Director