

CENTRAL CORRIDOR LIGHT RAIL TRANSIT
(GREEN LINE)
DISADVANTAGED BUSINESS ENTERPRISE
(DBE) REVIEW

PROGRAM EVALUATION AND AUDIT



November 2013

INTRODUCTION

Background

The \$957 million Central Corridor Light Rail Transit Project-Green Line (Green Line) will link downtown St. Paul and downtown Minneapolis along Washington and University avenues via the state Capitol and the University of Minnesota. Passengers will have the ability to board or alight from Green Line vehicles at 18 new stations plus five existing stations to be shared with the Blue Line-Hiawatha LRT (Blue Line). Green Line construction began in August 2010 on the planned 11-mile route with revenue service expected to begin in mid-2014. The Green Line will connect with the Blue Line at the Metrodome station in Minneapolis and with the Northstar commuter rail line at the Target Field Station.

The Metropolitan Council (Council) is the grantee of federal funds and is charged with building the Green Line in partnership with the Minnesota Department of Transportation (MnDOT). The Central Corridor Management Committee, which includes commissioners from Ramsey and Hennepin counties, the mayors of St. Paul and Minneapolis and representatives of the University of Minnesota, provides advice and oversight. Funding is provided by the Federal Transit Administration (FTA), Counties Transit Improvement Board (CTIB), State of Minnesota, Ramsey and Hennepin counties' Regional Railroad Authorities, City of St. Paul, Metropolitan Council and the Central Corridor Funders Collaborative.

Federal regulations require that any construction project over \$100,000 provide for disadvantaged business enterprise (DBE) participation. The overall DBE participation goal for construction of the Green Line is 14.24%, although it varies among the four contracts awarded for the project.

- Walsh Construction (Walsh) was awarded a contract on June 23, 2010 for seven miles of Civil East construction (CE) in St. Paul at a cost of \$205.1 million with a 15% DBE goal.
- Ames Construction/C. S. McCrossan Joint Venture (Ames/McCrossan) was awarded a \$113.8 million contract on August 25, 2010 to build the three-mile Civil West (CW) segment in Minneapolis with a 15.0% DBE goal.
- Aldridge/Collisys Joint Venture (Aldridge/Collisys) was awarded the \$87.9 million Systems contract (Systems) on November 18, 2010 with a 15.5% DBE goal.
- PCL Construction Services Inc. (PCL) was awarded a \$43.1 million contract on December 8, 2010 to convert a vacant factory building at the end of the Green line in downtown St. Paul into the Operations and Maintenance Facility (OMF) with a numeric 5.9% DBE goal and additional good faith efforts (GFE).

Good faith efforts to obtain DBE participation include:

- Considering the available pool of certified DBEs when determining subcontract or supply needs and furnishing them with information regarding plans and specifications.
- Providing names of DBEs considered, information given to the DBE and an explanation of why agreements could not be reached for DBEs to perform the work.
- Breaking out work items or subcontracting items the prime contractor normally performs.
- Using a DBE quote that represents a reasonable price even though it is higher than a non-DBE quote.

- Soliciting capable, certified DBEs through pre-bid meetings, advertising, telephone, mail, facsimile, e-mail, or a combination of the foregoing and following-up on DBEs that failed to submit a quote.
- Assisting DBEs in obtaining equipment, supplies, or materials for the project.
- Combining bids or portions of bids from several DBEs.
- Assisting interested DBEs in obtaining bonding, credit, or insurance on the project being bid.

Once a contract has been awarded, regardless of the initial goal, a grant recipient (Council) must be notified in writing by the prime contractor prior to the termination of a DBE subcontractor. If a DBE subcontractor fails to complete work under the subcontract for any reason, the Council must require the prime contractor to employ the above GFE for soliciting a replacement subcontractor.

As the grantee of funds provided by the FTA, the Council is responsible for monitoring the contractors constructing the Green Line to ensure that each one meets or surpasses the goals stated above. The Council's Office of Equal Opportunity (OEO) is charged with this responsibility. The Code of Federal Regulations (CFR) 49 Part 26.37 provides the following guidance regarding those monitoring responsibilities.

- The (Council's) DBE program must include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that the Council has reviewed contracting records and monitored work sites for this purpose.
- This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

Assurances

This audit was conducted in accordance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing* and the U. S. Government Accountability Office's *Government Auditing Standards*.

Scope

The Green Line Project consists of four primary construction projects plus MnDOT and University of Minnesota sub-recipient agreements and other minor/ancillary contracts. This review was limited to an evaluation of compliance with Central Corridor Project Office (CCPO) and Council DBE policies and operating procedures, contract requirements, State and FTA regulations and guidance as practiced on the Civil East, Civil West, Systems and OMF primary construction contracts.

Data used in this report was submitted to OEO and CCPO personnel by the four contractors through February 2013. Work is continuing by OEO personnel in closing out Green Line project contracts and final results may vary from that presented in this report.

Methodology

To gain an understanding of the practices conducted by Green Line personnel to comply with DBE requirements, the following methods of inquiry were used:

- Metro Transit management, construction, engineering and OEO personnel were interviewed.
- Contract documentation was reviewed and analyzed.
- DBE outreach and monitoring activities were reviewed and analyzed.
- Payments to DBE subcontractors were reviewed and verified with the DBE firms.
- Council, Metro Transit and CCPO policies, procedures and work instructions were reviewed.
- FTA and State regulations, guidance, best practices and prior Council audits were reviewed.

OBSERVATIONS

Contractor, DBE Firm and Community Outreach

The OEO has conducted prime contractor, DBE firm and community outreach activities designed to attract minority and disadvantaged workers and contractors, provide them with information regarding contracting opportunities, teach them about the unique requirements, regulations and characteristics of DBE contracting, acquaint them with prime and higher tier sub-contractors and provide them with information regarding the four primary Green Line construction contracts. Since September 2008, the following OEO sponsored outreach activities have occurred:

- Eleven employment workshops/community meetings in which construction job opportunities were identified and applicants aligned with union representatives, training and apprentice opportunities.
- Eight contractor and DBE firm “Meet & Greet” mixers – Public meetings in which OEO personnel preside over informational and networking gatherings between DBE firms, prime contractors and higher tier sub-contractors.
- Three workshops for DBE firms and contractors focused on special DBE contracting requirements.

DBE Certification

The Council is one of four agencies in Minnesota with the authority to certify DBEs under the Minnesota Unified Certification Program (MNUCP). The Council is also the agency responsible for maintaining the list of currently certified firms. Certification is valid for two years provided the firm continues to meet certification requirements.

Discussions with OEO personnel revealed that they are very knowledgeable regarding DBE certification requirements, including documentation needed to prove DBE status, annual monitoring, processes for decertification and the decertification appeal process.

Audit reviewed the certification status of each DBE firm working on the Green Line construction project. The DBEs listed on the Monthly DBE Progress/Payment Reports (Reports) submitted by each of the four Green Line construction contractors were compared to the DBE project list (OEO List) maintained by OEO personnel. The OEO List was then compared to the official MNUCP Certification List (UCL). That review disclosed the following:

- Six of the 82 DBE firms listed on the Reports did not appear on the OEO List, one of which was also not on the UCL, is not a DBE and should not be included on the Reports.
- 30 DBEs on the OEO List did not appear on the February 2013 Reports, the most recent ones reviewed by Audit.
 - The OEO list includes DBEs working on all aspects of the Green Line project, whereas the Reports contain the DBEs only on the four construction projects under review. This explains 15 of the 30 as follows:
 - Six performed under minor/ancillary Green Line project contracts.

- Six were subcontractors to the University of Minnesota sub-recipient agreement.
- Three conducted appraisals under MnDOT sub-recipient contracts.
- Nine are Independent trucking operators (ITOs) performing under trucking brokers and did not appear individually on the DBE report.
- Four are not working on the Green Line Project,
- Two are no longer DBE firms
- Five DBEs which were on the Reports (in addition to the two not on the Reports) are also not on the UCL. Two voluntarily quit the program, another graduated, one DBE owner retired and one firm was involuntarily decertified for failure to provide annual data. Three of the five did not incur any cost prior to being decertified and should not have appeared on the Reports.
- The Reports indicate that 13 DBE firms have not received payment as of February 2013. The CCPO reported that the project was 92% complete at that time.
- Three firms listed as DBEs on the OEO list did not appear on the UCL. However, one of these firms was decertified subsequent to the beginning of its work on the Green Line and it is appropriate for it to appear on the OEO list.

Overall, there is inconsistency between the Monthly DBE Progress/Payment Reports, the OEO DBE List and the MNUCP Certification List regarding firms reported as being DBE certified.

Field Office Monitoring Activities

Audit personnel met with the Council Authorized Representative (CAR) on each of the four Green Line construction projects to identify DBE monitoring activities conducted by the CAR, the person most closely associated with contractor operations. Audit also reviewed change order documentation and the policies, procedures and work instructions regarding field office DBE monitoring responsibilities on each of the four projects. The results of these inquiries are as follows:

- The CAR, Assistant CAR and/or Office Engineer on each contract reviewed each pay application to ensure that the monthly DBE report was included.
- Each CAR stated that CCPO OEO personnel were responsible for monitoring the monthly DBE reports.
- Each change order is reviewed to determine if additional DBE opportunities are available.
- Field office personnel seldom have interaction with DBE subcontractors, but if they are contacted, the DBE firm is referred to OEO.

Central Corridor Project Office Monitoring Activities

Personnel assigned to the CCPO depend upon the OEO representative to monitor DBE activities. However, the CCPO Quality Assurance (QA) Manager maintains contact with OEO personnel regarding site visits conducted by the OEO. He receives documentation when site visits are conducted and also inquires independently of OEO when he has not received such documentation or notification of visits. This information is then forwarded to the Metro Transit Deputy General Manager in charge of New Starts projects.

Office of Equal Opportunity Monitoring Activities

As stated in its OEO Procurement Policy 2008, "OEO Staff uses the monthly DBE Progress/Payment Reports, site visits and payment verification to monitor Council projects that have been assigned DBE goals." The Reports, submitted by the contractors, provide OEO staff with current DBE participation data which must be verified by OEO staff to ensure accuracy. Work site visits are an integral means of validating that the DBE firms reported by the prime contractors are doing the work and in the manner represented by the data included on the Reports. Verifying with the DBE that the firm received payment for its work throughout the project and in amounts corresponding with that reported by the prime contractor is another critical monitoring activity performed by OEO. Each of these activities was reviewed by audit as discussed in the following paragraphs.

DBE Monitoring - Monthly DBE Progress/Payment Report

An OEO employee is assigned to the Green Line project to ensure compliance with Council, State and FTA regulations and that the four contractors meet their contractual DBE goals. Audit reviewed several of the Reports submitted by the contractors to determine the accuracy of the information contained thereon, a review similar to that required of the Green Line OEO representative. Audit found extensive errors in the reports that were reviewed.

OEO Procurement Policies 2008: DBE Progress Report states that "OEO staff will review the following:

- Project goal and commitment
- Change orders and amendments made to original contract value
- Percentage of contract paid by Prime to DBE subcontractor is aligned with percentage committed by the Prime.
- Substitution or removal of DBE subcontractors
- Value of DBE payments for the period
- Calculation mistakes"

Audit's review disclosed that OEO personnel did review the project goals and through monthly DBE meetings and annual conferences with the contractors, contractor commitment to meeting those goals. In addition, when identified during site visits, OEO personnel did question and review change orders, amendments made to original contract values and the substitution or removal of DBE subcontractors.

Regarding the DBE participation calculation itself, OEO personnel did not review for calculation mistakes or the value of DBE payments for the period as required by its policy. Unless discovered during a site visit, OEO did not question changes in DBE contract values. OEO personnel reviewed the direction in which reported DBE participation went (percentage of contract paid by the contractor to the DBE subcontractor is aligned with the percentage committed by the contractor). If it appeared that the participation percent was increasing at a steady rate, no further review was conducted.

Audit's review of the Reports for the CE and OMF contracts disclosed the following:

- Civil East:
 - Errors began appearing on Report #6 and continued to increase in both number and amount through Report #24.
 - From Report 12 through Report 24, due to errors, DBE payments were underreported.

- Operations & Maintenance Facility:
 - Errors began appearing on Report #2 and continued to increase in both number and amount through Report #23.
 - From Report 2 through Report 17, due to errors, DBE payments were underreported and conversely, over the last 6 Reports they were over reported.

The types of errors found include the following:

- Incorrect contract values
- Incorrect current period payment amounts
- Incorrect total payment amounts
- Incorrect participation percentages
- Incorrect DBE payment percentages

During the audit, OEO personnel developed a revised Report for which Audit reviewed and provided comments. Upon finalizing the format and instructions for this revised Report, contractors should be able to provide more accurate information, OEO personnel will have additional information regarding DBE sub-contractor performance and DBE participation information reported by the Council should be more accurate.

DBE Monitoring – Participation Calculations

Audit reviewed all DBE firms listed on the Reports for the four contracts to determine if they were being credited for the proper amount of monetary participation (see *Exhibit I* for an explanation of counting DBE participation and *Exhibits II* and *III* for summary data and analysis).

Throughout the duration of the Green Line project each of the four contractors have reported a higher percentage of DBE participation than actually occurred, when calculated as prescribed by federal regulation. The most prominent problem was reporting participation before DBE contractors were paid. The FTA regulation specifies that participation can be reported only after work has been completed and the DBE paid.

Through February 2013 when the project was 92% complete, reported DBE participation for the overall project was 17.25% (see *Exhibit II*) contracted but only 16.11% paid (a 1.14 percentage point difference – see *Exhibit III*). Adjusting for overstatements of suppliers, firms not appearing on the UCL and trucking revisions (see *DBE Monitoring – Trucking Firms*, below), Audit calculated these participation rates to be 16.23% and 14.96%, respectively, a 1.27 percentage point difference. Aldridge/Collisys reported the fewest errors, identifying most suppliers and reducing their participation rates to 60% of their contracted amounts, as required. The Walsh and PCL Reports contained the most errors.

The contract data appearing on the Reports indicates that all projects will meet their DBE goals. However, because of the variance between contracted and paid dollars and the number of Report errors found by Audit (see *DBE Monitoring – Monthly DBE Progress/Payment Report*, above), final DBE participation rates will likely change. Based upon the most accurate estimate that Audit can calculate, it is likely that every contractor except Aldridge/Collisys will meet its contractual DBE goal.

DBE Monitoring – Work Site Visits

Personnel from OEO conduct periodic construction and office site visits that can include taking pictures of the activity, observing operations and talking with DBE firm workers. The purpose of these site visits is to determine if the DBE contractor is performing a commercial useful function (CUF), and if so, what percent of that CUF is allowable for counting toward the prime contractors DBE goal.

The site visits are an aspect of the OEO DBE monitoring program required by CFR 49 Part 26.37, which states,

Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose.

The OEO *DBE Commercially Useful Function (CUF) Site Visit Plan Guidelines and Work Instructions – CCLRT (Site Visit Plan)* identifies procedures to be conducted, including site visitation frequencies, in order to meet the federal requirements (see *Exhibit IV*). Audit calculates that during calendar years 2011 and 2012, 299 specific visits would have been required in order to comply with the *Site Visit Plan*. Office of Equal Opportunity personnel conducted 198 specific site visits along with 22 general visits during those two years. The following chart summarizes the required and actual visits for each of the four Green Line contracts.

	CE		CW		OMF		Systems		Total	
	#	%	#	%	#	%	#	%	#	%
Required Visits	105		107		64		23		299	
Actual Visits	98	93.33%	54	50.47%	30	46.88%	16	69.57%	198	66.22%
Variance	(7)	-6.67%	(53)	-49.53%	(34)	-53.13%	(7)	-30.43%	(101)	-33.78%

The CCPO Quality Assurance Manager (QA Manager) maintains a spreadsheet of OEO DBE monitoring activities, listing each DBE firm and the month in which each site visit was conducted. Although OEO was responsible for notifying the QA Manager when each site visit was conducted, during those periods when there was a lull in visits (see *Exhibit V*), the QA Manager was proactive in requesting updated information. Audit reviewed the QA Manager's records regarding OEO site visits resulting in the following observations:

- 16 DBE firms have been contracted for less than 2 months; 10 had been visited once, the proper amount, 6 had not been visited.
- 18 DBE firms had not been paid as yet through January 2013 or their work had been completed prior to the 2011-2012 period under review. Therefore, no visits were required; however, 2 of those firms were visited once.
- There is no planned pattern of site visits. For example, from March through June 2012, a period of mild weather when construction occurred, OEO conducted only six site visits (see *Exhibit IV*). This is a time in which the initial annual site visits could have been conducted.
- See *Exhibit VI* for additional site visit and variance details.

Audit also compared the Reports to the QA Manager's monitoring spreadsheet and observed the following:

- 24 DBE firms appeared on the Reports that did not appear on the QA Manager's tracking spreadsheet.
- 9 DBE firms appeared on the tracking spreadsheet, but not on the Reports

DBE Monitoring – Site Visit Findings

From the 198 site visits identified above, 22 questionable circumstances arose that required further review by OEO personnel. In each case, the issue was whether or not the firm was to be counted as a DBE firm and its participation counted toward the project DBE goals. These firms accounted for \$4,155,453 in DBE participation as detailed below.

Audit reviewed the documentation regarding these 22 cases with the following results:

- 6 issues have been resolved and the file has been fully documented.
- 3 issues have been resolved, however the file has not been adequately documented.
- 2 issues have been resolved and the Report has been adjusted.
- 1 was a trucking firm, the proper calculation for which is included under "DBE Monitoring – Trucking Firms," below.
- 6 issues required participation revisions to the Report that have yet to be made, decreasing the reported contract amount by **(\$2,057,676)** and the paid amount by **(\$2,097,776)**. These issues involved three non-DBE firms for which no credit was permissible and two DBE brokers and one DBE supplier for which participation credit was counted at 100% when it should have been counted at 60% and 5%, respectively.
- 4 issues required additional OEO attention; however, Audit could find no documentation to support that further action had been accomplished.

Clearly, conducting site visits has shown to be an important method of monitoring DBE participation on the Green Line project.

DBE Monitoring – Trucking Firms

Trucking firms provide a unique situation in determining DBE participation. Industry practice commonly involves companies leasing trucks from owner-operators and other sources. Part 49, Section 26.55 of the CFR "requires DBEs to have overall control of trucking operations and have at least one truck and driver of its own," but it can lease the trucks of others, both DBEs and non-DBEs, including owner operators. Therefore, the rules regarding counting trucking participation are different from those for other DBE firms (see *Exhibit I*).

Civil East and Civil West contracting personnel used two primary DBE trucking brokers that employed their own resources, leased trucks from DBE independent trucking operators (ITOs) and brokered trucking services from non-DBE ITOs. This arrangement made it difficult to calculate actual DBE participation. Therefore, OEO personnel required that the primary trucking firms prepare annual reports of participation, even though the OEO *Site Visit Plan* required quarterly reporting (see *DBE Monitoring – Work Site Visits*, above). However, even with this information, the Monthly DBE Progress Reports were not updated. As a result, the Reports recorded less DBE participation than actually occurred

(understated) amounting to **(\$554,512)** for CE and more DBE participation than actually occurred (overstated) amounting to \$8,632 for CW. Had the Reports been updated to include the participation verified by OEO personnel, they would have been overstated by \$98,658 and \$6,146, respectively (see the table below for details).

Nine of the ten trucking firms used on the OMF contract were DBE firms for which the entire amount paid was to that firm. Therefore, the amount identified on the Report should have been correct. However, Audit determined that the Reports were understated **(\$22,184)**. Had the Reports been updated to include the participation verified by OEO personnel, they would have been overstated by \$22,678.

	Monthly DBE Progress Report	OEO Verified	Audit Calculated	Audit Variance from Monthly Report	Audit Variance from OEO Verified	OEO Variance
Civil East	3,245,399	3,898,569	3,799,911	554,512	(98,658)	653,170
Civil West	928,972	926,486	920,340	(8,632)	(6,146)	(2,486)
OMF	62,469	107,331	84,653	22,184	(22,678)	44,862
	4,236,839	4,932,386	4,804,904	568,065	(127,482)	695,547

No trucking firms were used on the Systems contract.

DBE Monitoring – Periodic Meetings with Contractors

Personnel from OEO conducted monthly and annual meetings with the contractors. The monthly CCPO Joint DBE/AA Oversight meetings were attended by CCPO and OEO personnel, the contractors and members of the community who discussed the current DBE status of each of the four contracts.

For the annual meetings, the contractors provided answers and data to a list of questions provided by OEO personnel. Audit reviewed the contractor responses with the following results:

- Walsh provided partial and vague responses.
- Aldridge/Collisys and PCL provided complete listings of COs affecting DBEs, including which ones increased or reduced DBE participation; Ames/McCrossan provided less detailed lists.
- Ames/McCrossan and PCL provided detailed lists of changes to DBE sub-contracts.
- The following comments were provided regarding interaction with OEO personnel:
 - OEO “staff follows up with PCL, identifies areas of concern as they arise and assists in resolving misunderstandings.”
 - “The OEO has done a fantastic job in keeping the (monthly CCPO Light Rail Joint DBE/AA Oversight) meetings beneficial to all who participate. In the past year, the meetings have been less adversarial. The level of trust has grown dramatically making the meetings much more effective.” (PCL)
 - “Met Council’s OEO has provided useful insights relating to CUF and normal industry standards.” “ACJV continues to seek best practices from independent experts as to the validity of our DBE program.”

DBE Monitoring – Payment Verification

Part 49, Section 26.29a of the CFR states that the owners “must establish, as part of [the] DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor” and the “DBE program must provide appropriate means to enforce the requirements of this section.” Minnesota Statutes §16A.1245 requires that the “prime contractor agrees to pay each subcontractor within ten (10) days of the prime contractor’s receipt of payment from the state for undisputed services provided by the subcontractor.” This more restrictive language is included in each of the four prime contracts. The OEO is responsible for Council compliance with this regulation.

Audit found that OEO did not have an effective mechanism to monitor prompt payment of DBE subcontractors. Prime contractors were not obligated to record and maintain subcontractor prompt payment information on the DBE subcontractors. Office of Equal Opportunity personnel distributed 191 payment verification forms to DBE firms. Each payment verification request was associated with a specific DBE Progress/Project Report (Report). The Reports ranged from December 15, 2011 to January 25, 2013. Although payment verification forms were distributed by OEO to monitor contractor prompt payment, the data reported on 78% of the forms did not match the respective Report data. In addition, 9% of the DBE firms were tiered under multiple subcontractors, increasing the difficulty for verifying payment.

Audit conducted a search to identify best practices and reviewed the DBE programs of three other agencies that receive FTA funds, with the following results:

- Prime contractors submit subcontractor information using an electronic payment tracking system throughout the life of the contract. The owner would randomly request check copies from the contractor to identify any anomalies or deficiencies. If any were identified, the owner would direct the contractor to make the necessary changes.
- Prime contractors would complete a subcontractor payment questionnaire, forwarding it to the owner, prior to or immediately after processing payment for the subcontractor’s services.

Considerations from the Blue Line

Audit conducted a review of DBE utilization on the Blue Line, the results of which were included in its report, *Disadvantaged Business Enterprise Participation in the Hiawatha Light Rail Project, Construction Phase*, dated September 23, 2005 (Blue Line Report). Recommendations #2 and #4 of the Blue Line Report were specific to the Blue Line. The other three recommendations can be applied to the Green Line construction project and are discussed below.

DBE Participation

Recommendation #1 identified specific DBE firms that raised participation concerns. Audit compared the DBE firms identified in the Blue Line Report to those that have participated on the Green Line project. Other than trucking firms, three that were identified as having possible participation problems when working on the Blue Line have participated on both projects. After reviewing Blue Line participation, the three firms were found to be 100% participating firms. Audit verified with OEO that their current status remains as such.

Policy/Procedure Actions

Recommendations #3 and #5 are general in nature and applicable to any large federally funded project.

- Although Recommendation #3 pertains to design/build projects, it and the OEO response are also clearly applicable to the design-bid-build Green Line project.
 - The recommendation states, “For design/build projects, make a plan to encourage DBE involvement as early as practicable in the project’s development.”
 - OEO management responded that, “The aspect of communicating with the DBEs before, during, and, to some degree, after a project like the HL RTP is crucial to achieving goal attainment. We are also developing strategies regarding conducting project site visits to ensure compliance.”
 - Audit observed that the OEO has implemented early and continuous communication with DBEs and contractors. Strategies for conducting site visits have also been implemented. However, as described under *DBE Monitoring – Work Site Visits* and *DBE Monitoring – Site Visit Findings*, above, OEO personnel need to review current resources and effort allocated to site visitation tasks.
- Recommendation #5 was to “Provide consistent, regular monitoring of DBE activity on federally funded Council projects,”
 - It stated that “each major project should have a DBE monitoring plan which explains in detail the project’s goal, strategies, monitoring activities to assess compliance and performance measures to determine the success of DBE outreach for the project.”
 - Again, OEO management responded positively, stating that, “ OEO will comply with the recommendation made by the audit regarding consistent, regular monitoring. We fully support accountability on all of our FTA-funded projects. OEO is developing a more detailed DBE plan for monitoring all FTA-funded projects. If the Council has the responsibility for future FTA-funded projects similar to the HL RTP (Blue Line), the OEO will have the responsibility for the DBE goal.”
 - Audit observed that monitoring procedures have been developed as stated in the *Site Visit Plan* (see *DBE Monitoring – Work Site Visits*), above. However, monitoring activities have not been fully executed as disclosed under the *DBE Certifications* section and the following *Office of Economic Opportunity Monitoring Activities* sections:
 - *DBE Monitoring - Monthly DBE Progress/Payment Report*
 - *DBE Monitoring – Participation Calculations*

CONCLUSIONS

The *Central Corridor Light Rail Transit Disadvantaged Business Enterprise Program DBE Strategic Plan*, dated September 2011, states, “In order to achieve the vision and mission of the Central Corridor DBE Program the critical success factors (Factors) must be addressed. The Central Corridor LRT’s DBE critical success factors include:

- Commitment to resources to support the DBE program,
- Ensuring project office staff know and understand the DBE regulation and have a commitment to uphold them,
- Maintaining credibility of the DBE program both internally and externally,
- Staying in touch with customers both internally and externally,
- Monitoring and evaluating the Central Corridor LRT DBE program on a regular basis, and
- Developing a plan to deal with non compliance that is supported by leadership.

..... With dedication to the Central Corridor DBE program the entire listed critical success factors can and will be accomplished.”

Office of Equal Opportunity personnel have engaged prospective workers, DBE subcontractors, prime contractors and local communities regarding DBE goals, Green Line project contracting opportunities and DBE contracting regulations. They have also maintained open communications through monthly and annual meetings with CCPO personnel, project contractors, DBE subcontractors, FTA oversight personnel and community advocates. Through these activities, OEO personnel have successfully met the middle two Factors identified above (maintaining credibility and staying in touch).

Throughout the audit, both OEO and CCPO personnel have shown knowledge of the Council’s DBE program plus a commitment to abide by DBE regulations. Office of Equal Opportunity personnel have also proposed DBE certifications and de-certifications to MnUCP in a knowledgeable and professional manner (Factor #2). In addition, plans have been developed to deal with non-compliance (Factor #6). The placement of a resident OEO specialist at the CCPO plus the addition of a site visit specialist working out of the Council’s Robert Street office indicates a commitment to resources to support the DBE program (Factor #1)

The primary issue is not one of maintaining credibility, staying in touch, commitment, knowledge or resource support. The primary concerns identified during this review involve monitoring. Monitoring includes reviewing goals and participation with the contractors throughout the project; evaluating change orders, contract amendments and the removal and substitution of DBE firms; conducting site visits; verifying Monthly DBE Progress Report data and verifying payments to DBE firms. Office of Equal Opportunity personnel have shown both strengths and weaknesses in these areas as follows:

- **Monitoring strengths:**
 - OEO personnel reviewed contract DBE goals, held monthly and annual DBE meetings with the contractors, and reviewed change orders, DBE subcontract amendments and the substitution or removal of DBE subcontractors when brought to their attention through site visits or contractor written requests.

- OEO personnel have developed a revised Report which should provide contractors the ability to report more accurate information, OEO personnel with additional information regarding DBE sub-contractor performance, and more accurate reporting of DBE participation by the Council, if OEO monitoring activities include a more detailed review of the Report.
- OEO personnel identified 22 questionable circumstances amounting to \$2.1 million in over reported participation as a result of their site visits. Conducting site visits has shown to be an important method of monitoring DBE participation.
- OEO personnel were aware of the reporting intricacies required to determine DBE trucking participation and worked with the trucking brokers on the CE and CW contracts to obtain that information.
- **Monitoring weaknesses:**
 - OEO personnel can take greater care in identifying and tracking DBE firms working on the Green Line project, for there is an overall inconsistency between the firms listed on the Monthly DBE Progress Reports, the OEO List and the MnUCP list regarding firms reported as being DBE certified.
 - OEO personnel did not verify or reconcile data appearing on the Monthly DBE Progress Reports. Currently, the Reports indicate that all contractors will meet their DBE goal. However, Audit estimates that only three of the contractors will do so; Aldridge/Collisys may not (*Exhibit II*).
 - OEO personnel conducted only 66% of the site visits required in order to comply with OEO's *Site Visit Plan*.
 - OEO personnel have not followed through on site visit findings to ensure that adjustments were made to the Reports.
 - OEO and trucking broker personnel made calculation errors when determining DBE participation. In addition, OEO personnel required only annual reporting (quarterly reporting was required) and failed to verify that trucking participation adjustments were made by the contractors to the Monthly DBE Progress Reports.
 - OEO personnel have been unable to effectively monitor payments to DBE subcontractors using the existing process.

Construction of the Green Line began in the summer of 2010 and is 96% complete through August 2013. The data used in this report was submitted to OEO and CCPO personnel by the four contractors through February 2013. OEO personnel are in the process of closing out their work on the four primary project contracts. Therefore, final DBE monitoring results may vary from those presented in this report.

RECOMMENDATIONS

Program Evaluation and Audit recommendations are categorized according to the level of risk they pose for the Council. The categories are:

- **Essential** – Steps must be taken to avoid the emergence of critical risks to the Council or to add great value to the Council and its programs. Essential recommendations are tracked through the Audit Database and status is reported twice annually to the Council’s Audit Committee.
- **Significant** – Adds value to programs or initiatives of the Council, but is not necessary to avoid major control risks or other critical risk exposures. Significant recommendations are also tracked with status reports to the Council’s Audit Committee.
- **Considerations** – Recommendation would be beneficial, but may be subject to being set aside in favor of higher priority activities for the Council, or may require collaboration with another program area or division. Considerations are not tracked or reported. Their implementation is solely at the hands of management.
- **Verbal Recommendation** – An issue was found that bears mentioning, but is not sufficient to constitute a control risk or other repercussions to warrant inclusion in the written report. Verbal recommendations are documented in the file, but are not tracked or reported regularly.

1. (Essential) The Council’s OEO department should ensure that DBE participation on the Green Line and other construction projects having DBE goals is adequately monitored.

- a. OEO personnel should perform reviews of contractor Monthly DBE progress/Payment Reports in such a manner to ensure that participation percentages and other reported data are accurate, paying close attention to suppliers, brokers and trucking firms.**

Audit found numerous calculation errors on the Reports including participation percentages, individual firm payment totals from one month to the next and subcontract values. This was of particular importance regarding suppliers and brokers that are to be granted only 60% and 5% of their contract values, respectively. This resulted in an overstatement of the Reports by \$2,057,676. In addition, OEO calculation errors, annual reporting by trucking brokers (quarterly reporting was required) and not verifying that the Reports had been properly adjusted, resulted in Report understatements totaling **(\$568,065)**.

Maintaining accurate and current DBE participation rates reduces the risk to the Council of reporting incorrect data to the public. In addition it provides Green Line management and OEO personnel correct information upon which to manage DBE participation to ensure contract goals are met.

- b. OEO personnel should perform construction project site visits in a timely manner and in the frequencies required by procedures, and must verify that required adjustments are made to the Monthly DBE Progress/Payment reports.**

Site visits have proven to be a valuable monitoring tool for OEO personnel. Although OEO personnel performed only two thirds of the required visits, of the 198 that were performed, 22 resulted in the need

for additional exploration and analysis resulting in DBE participation adjustments approaching \$2,100,000.

Even though site visits have been productive, OEO personnel have not followed-up to ensure that the required adjustments were made to the Reports (they have not been). In addition, OEO personnel do not have a planned pattern of site visits. Only 28 sub-contractors were visited the proper number of times, 24 were not visited at all and only six site visits were conducted during March through June 2012, a period of mild weather and high construction activity.

Site visits are the primary method used to ensure that the participation reported by the four Green Line contractors is accurate. A properly planned and executed site visit function, along with verification of contractor Report data, can ensure that reported DBE participation rates are accurate.

Management Response: *Management generally agrees with Audit's findings. OEO began the monitoring phase of the CCLRT construction contracts with DBE monitoring tools and processes that were successfully used on smaller scale FTA and EPA funded construction projects. CUF Site Visits, Progress Reports, Pay Verifications, Monthly Oversight meetings, Annual DBE/Workforce Summits are all monitoring activities OEO employed on the CCLRT project. OEO realizes that the complexity of the CCLRT construction project is beyond the capacity of the tools OEO has in place. OEO is revising and adjusting every DBE monitoring tool to respond to the complexity of projects like the CCLRT. However, current OEO monitoring activities are manual, paper based and performed independent one from another. An electronic monitoring system designed to automate and capture all required information would significantly improve OEO's monitoring efforts.*

- a. Progress Reports include data from DBE CUF credit determination, issues of retainage, sales tax payment, and pay request denials which are very complex. OEO has begun the reevaluation of the Progress Report and other tools in order to provide accurate monthly DBE participation rates.*
- b. The CUF Site Visit report and methodology to determine the appropriate number of visits were developed in the fall of 2011, and has proven to be flawed. Forty-four CCLRT DBEs have multiple construction contracts and when the current methodology is applied to determine the appropriate number of CUF Site Visits the resulting number is not always practical or possible with existing resources. For example a DBE steel erection firm working on CCLRT had 5 separate construction contracts; under the current methodology OEO is responsible to conduct 10 CUF Site Visits for the same DBE firm each of the three construction seasons. The frequent addition and deletion of DBE firms (73 were added and 18 were removed) also increased the difficulty of conducting site visits according to procedure. OEO is revising its CUF Site Visit methodology for monitoring large construction projects.*

Currently all OEO DBE monitoring activities are manual and paper based. Additionally these monitoring activities are performed independently with little cohesive coordination. An electronic monitoring system designed to automate and capture all the required information would dramatically improve OEO's monitoring efforts. Even with this technology OEO would require an increase in personnel to fulfill all the monitoring responsibilities.

Staff Responsible: OEO staff

Timetable:

1st Quarter 2014 – Web-based Contract DBE tool. Funding for a Web-based Contract DBE technology based system has been requested and the technology is in the early stages of design. The

Council is working with the City of Minneapolis and the Minnesota Sports Facility Administration (MFSA) to design a system that can be used for multiple governmental agencies and contractors would only have to learn one product.

January 1, 2014 - Revised OEO Mega Project Monitoring Work Instructions.

February 1, 2014 - Revised Progress Report.

- 2. (Essential) – The OEO should identify a mechanism and, if necessary, contract language to assist the Council and DBE contractors in recording and maintaining payment information to all DBE subcontractor tiers.**

The Council is not able to effectively monitor payments to DBE firms under the current monitoring process. A mechanism requiring prime contractors to record and maintain payment information to every subcontractor tier would assist in the Council's role of complying with FTA and State prompt payment requirements. This would also assist in earlier detection and correction of late payments to DBE firms.

Management Response: *OEO agrees with this finding. Appropriate Council mechanisms, policies and contract language are needed to ensure contractor compliance in providing financial and contractual information about DBEs on the project. OEO envisions the technology based monitoring system, referenced in the first management response, to include financial transaction information for all construction tiers. OEO staff, Procurement, and Legal staff will begin drafting sample contract language requiring prime contractors to identify and provide payment information of DBE subcontractors at all tiers.*

Staff Responsible: *OEO staff, CPU staff, OGC staff*

Timetable:

December 1, 2013 – *Language completed for contracts*

1st Quarter 2014 – *Web-based Contract DBE tool. Funding for a Web-based Contract DBE technology based system has been requested and the technology is in the early stages of design. The Council is working with the City of Minneapolis and the MFSA to design a system that can be used for multiple governmental agencies and contractors would only have to learn one product.*

- 3. (Significant) Office of Equal Opportunity personnel should maintain informative lists of those DBE firms actively participating on the Green Line project.**

Audit found numerous discrepancies between the master list of DBE firms maintained by OEO personnel and those firms that were listed by the four contractors on the Monthly DBE Progress/Payment Reports. Additional discrepancies appeared when comparing those listings to the official Minnesota Unified Certified Program (MNUCP) list of certified DBE firms. For example, six DBE firms appearing on the Monthly DBE Payment/Progress Reports did not appear on the OEO master list and nine DBE firms appearing on the OEO master list did not appear on the MNUCP list.

To properly monitor and ensure that continuous accurate DBE participation rates are reported, it is important first to ensure that the firms being counted have been certified. Maintaining an accurate listing of contracted DBE firms and periodically comparing that list to the Monthly DBE Progress/Payment Reports and the MNUCP list can provide that assurance. It can also enable OEO personnel to identify when contractors report participation by uncertified firms and assist in identifying firms initially listed by contractors as sub-contractors, but later not provided work.

Management Response: OEO will identify a process for compiling accurate lists of participating DBEs and will train OEO personnel on the process.

Staff Responsible: OEO staff

Timetable: Immediately

4. (Significant) Contract field office personnel should play a more direct role in monitoring contractor DBE activity.

Field office personnel have the most direct contact with contractors and subcontractors. They can play a more important role in monitoring DBE participation by identifying issues early and communicating those concerns to OEO personnel. For example, OEO personnel have tried to conduct some site visits only to find that the sub-contractor is no longer working on the project. Coordinated communication between field office and OEO personnel could alleviate this problem.

Management Response: OEO and Council construction field staff will assist one another in monitoring DBE activity by conducting periodic and structured meetings to identify and discuss outstanding issues.

Staff Responsible: OEO staff, Project Office staff

Timetable: January 1st 2014 - Revised OEO Mega Project Monitoring Work Instructions.

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Exhibit I: DBE Participation Guidance

- I. Count the entire amount of:
 - A. Work performed by the DBE's own forces plus the cost of supplies and materials.
 - B. Fees or commissions charged by a DBE firm for providing a bona fide service.
 - C. Work subcontracted to other DBEs; work subcontracted to non-DBE firms does not count.

- II. Count expenditures only if the DBE is performing a commercially useful function (CUF) on that contract by performing, managing, and supervising the work involved, negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material.

- III. DBE trucking companies:
 - A. Must be responsible for the management and supervision of the entire trucking operation.
 - B. Must own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - C. 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.
 - D. Receives credit for the total value of the transportation services of a lessee DBE trucking firm.
 - E. Receives credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. All additional participation by non-DBE trucks is credited only for the fee or commission paid to the non-DBE lessee trucking firm.

Example: DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

- IV. Count expenditures with DBE firms for materials or supplies as follows:
 - A. If from a DBE manufacturer, count 100 percent.
 - B. If from a DBE regular dealer, count 60 percent (packagers, brokers, manufacturers' representatives or other persons who arrange or expedite transactions are not regular dealers).

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Exhibit I: DBE Participation Guidance (continued)

- V. Materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count only the 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.

- VI. If a firm is not currently certified as a DBE at the time of the execution of the contract, do not count the firm's participation toward any DBE goals. In addition, do not count the dollar value of work performed with a firm after it has ceased to be certified.

- VII. Do not count participation until the amount being counted has actually been paid to the DBE.

Source: e-CFR current as of July 19, 2013 - *49 CFR* 26.55: How Is DBE Participation Counted Toward Goals?

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Exhibit II: Audit Adjusted DBE Participation

Contract	Total Payment	Date	DBE Payment		Audit Adjustments			Adjusted			% Complete	
			Amount	Percent	Supplier	Broker	Not on UCL	Adjusted DBE	Adj. Percent	Contract Goal		Var.
Civil East	218,648,836	2/25/13	37,612,255	17.20%	(2,653,792)	(881,589)	(58,840)	34,018,034	15.56%	15.00%	0.56%	99%
Civil West	120,975,004	2/15/13	21,216,955	17.54%	(155,869)	(93,538)	0	20,967,548	17.33%	15.00%	2.33%	99%
OMF	39,471,722	2/25/13	3,722,976	9.43%	0	(78,882)	(541,099)	3,102,995	7.86%	5.90%	1.96%	91%
Systems	55,465,352	2/28/13	7,440,761	13.42%	(10,645)	(448,672)	(44,294)	6,937,150	12.51%	15.50%	-2.99%	63%
	<u>434,560,914</u>		<u>69,992,947</u>	16.11%	<u>(2,820,306)</u>	<u>(1,502,681)</u>	<u>(644,233)</u>	<u>65,025,727</u>	14.96%	14.24%		

Note 2

- Notes:** 1. Data is through February 2013.
2. Each contract is judged according to its individual goal. The total contract DBE goal is provided for comparison purposes only.

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Exhibit III: Audit Adjusted DBE Analysis

Contract	DBE Contracted			Audit Adjustments			Var.	# of DBEs	Count Errors
	Total Amount	Amount	Percent	Adjustments	Adjusted DBE	Adj. Percent			
Civil East	222,368,046	40,397,057	18.17%	(3,594,221)	36,802,836	16.55%	-1.62%	49	8
Civil West	122,167,150	23,741,930	19.43%	(249,407)	23,492,523	19.23%	-0.20%	47	4
OMF	47,809,239	4,848,623	10.14%	(619,981)	4,228,642	8.84%	-1.30%	37	6
Systems	90,411,201	14,307,169	15.82%	(503,610)	13,803,559	15.27%	-0.56%	14	1
	482,755,636	83,294,779	17.25%	(4,967,219)	78,327,560	16.23%	-1.03%	147	19

Contract	DBE Payments			Audit Adjustments			Var.	# of DBEs	Count Errors
	Total Payment	DBE Payment	Percent	Adjustments	Adjusted DBE	Adj. Percent			
Civil East	218,648,836	37,612,255	17.20%	(3,588,186)	34,024,069	15.56%	-1.64%	49	8
Civil West	120,975,004	21,216,955	17.54%	(249,617)	20,967,338	17.33%	-0.21%	47	4
OMF	39,471,722	3,722,976	9.43%	(615,067)	3,107,909	7.87%	-1.56%	37	6
Systems	55,465,352	7,440,761	13.42%	(539,059)	6,901,702	12.44%	-0.97%	14	1
	434,560,914	69,992,947	16.11%	(4,991,929)	65,001,018	14.96%	-1.15%	147	19
		Variance	-1.14%		Variance	-1.27%			

Note: Data is through February 2013.

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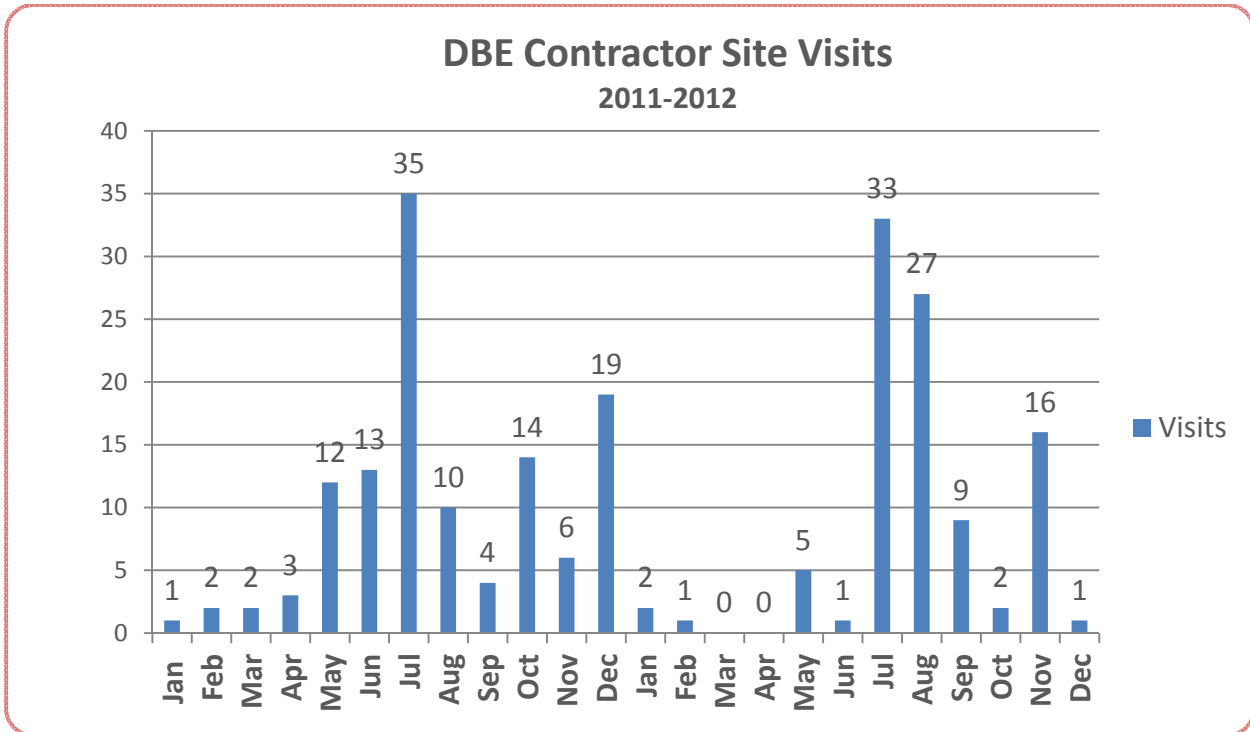
Exhibit IV: OEO DBE Site Visit Guidelines

- OEO will conduct contractor specific site visits for every DBE firm working on the contract.
- OEO will conduct weekly specific and general (documented with photographs only) site visits.
- DBEs that perform construction work:
 - OEO will conduct a specific site visit and if work extends longer than two months but is completed within one construction season, two site visits will be conducted.
 - For multiyear contracts, at least two site visits will be conducted during each construction season.
 - OEO will conduct general site visits whenever possible.
- DBEs that provide services (satellite toilets, traffic control, janitorial work, temp fence, etc.)
 - ODEO staff will conduct a site visit at company's home office.
 - ODEO staff will document DBE owned items on construction site (pictures).
- DBEs that provide supplies (electrical, construction materials, etc.)
 - ODEO staff will conduct site visit at supplier's office / warehouse.
 - When possible CCLRT related supplies housed in warehouse will be photographed.
 - When possible DBE provided supplies on-site will be photographed.
- DBE trucking
 - ODEO staff will interview drivers (when possible) of DBE and DBE leased trucks on job site.
 - ODEO staff will photograph DBE trucks and DBE leased trucks whenever possible.
 - ODEO staff will review quarterly DBE trucking reports provided by DBE trucking brokers.

Source: OEO DBE Commercially Useful Function (CUF) Site Visit Plan Guidelines and Work Instructions – CCLRT (Site Visit Plan)

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Exhibit V: DBE Contractor Site Visits



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Exhibit VI: DBE Site Visit Analysis Summary

Number of Visits	Number of DBEs Visited					Comment	
	CE	CW	OMF	Sys	Total		
0	5	12	7		24	1 firm worked on the project since inception	
1	18	21	13	8	60		
2	10	8	7	4	29		
3	3	1			4		
4	5	1	1		7		
5	1				1		
6	4	2			6		
7	2				2		
	48	45	28	12	133		
0,1	5	2	6	1	14	Visit not required; no work performed by the DBE	
0	1		3		4		Visit not required; work completed prior to 2011
1		3			3		DBEs visited, two twice, although not on monthly Reports
Total	54	50	37	13	154		

Visit Variance	Number of DBEs Visited					Less Than Required	More Than Required	Comment	
	CE	CW	OMF	Sys	Total				
0	9	8	6	5	28			Proper number of DBE site visits.	
1	17	17	12	7	53	48	5		48 visited one time less than required; 5 - one time more
2	10	15	6		31	26	5		26 visited two times less than required; 5 - two times more
3	4	4	2		10	9	1		9 visited three times less than required; 1 - three times more
4	1	2	2		5	5			5 visited four times less than required
5	1				1	1			1 visited five times less than required
6									
7									
	42	46	28	12	128	89	11		
0	5	2	6	1	14			Visit not required; no work performed by the DBE	
0	1		3		4				Visit not required; work completed prior to 2011
1	6	2			8				DBEs visited, two twice, although not on monthly Reports
Total	54	50	37	13	154				



390 Robert Street North
St Paul, MN 55101-1805