

**TARGET FIELD STATION  
(INTERCHANGE)  
DISADVANTAGED BUSINESS  
ENTERPRISE (DBE)  
REVIEW**

*PROGRAM EVALUATION AND AUDIT*



January 2014

# INTRODUCTION

## *Background*

The \$77 million Target Field Station (TFS) project, formerly known as the Interchange, scheduled to open in 2014, will serve as a central, multi-modal transportation hub and community gathering space just past Target Field in the North loop district of downtown Minneapolis. It includes an elevated 1.5 acre outdoor plaza with 66,000 square feet of civic space, elevated rail platforms, parking, and retail space.

Light Rail Transit (LRT) ridership is expected to double when the Green Line is opened in June 2014. The Blue and Green LRT lines arriving from the Mall of America to the south and St. Paul to the east, respectively, will share this space with the Northstar Commuter Rail arriving from the northwest and the Cedar Lake east/west bike through fare. Connecting links to accommodate the planned Southwest LRT (Green Line Extension) arriving from the southwest and the Bottineau LRT arriving from the north are also included in the TFS. In addition, the TFS provides connections to more than 1,900 daily bus operations.

The \$77 million TFS is funded by the following local (42 percent), federal (36 percent) and state (22 percent) sources:

- \$19.1 million - Hennepin County
- \$17.2 million – Minnesota state bonding
- \$10.8 million – Hennepin County Regional Railroad Authority (HCRRA)
- \$10.5 million - Federal Transportation Administration (FTA)
- \$10.0 million - Metropolitan Council
  - \$6.9 million – Federal Highway Administration
  - \$1.5 million - Minnesota Ballpark Authority
  - \$0.5 million – City of Minneapolis
  - \$0.5 million - Mississippi Watershed Management Organization

The Metropolitan Council (Council) is the recipient of federal grant funds and the agency charged with ensuring Disadvantaged Business Enterprise (DBE) goals are set, monitored and met. Federal regulations require that any construction project over \$100,000 provide for disadvantaged business enterprise (DBE) participation. The DBE participation goal for construction of the TFS is 15%. Hennepin County, under a cooperative agreement with the Hennepin County Regional Railroad Authority (HCRRA), is the owner and sub-recipient charged with constructing the TFS.

Unlike the soon to be completed Green Line for which a design-bid-build contracting process was used, the TFS is being constructed using a design-build process. Design-build lends itself to faster completion. It combines the processes of design and contractor selection, allowing construction to begin sooner. Completion of the TFS in time for the opening of the Green Line was a major factor in selecting the design-build process. Knutson Construction Services, Inc. has been awarded this design-build contract.

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 for convenience. If a DBE subcontractor fails to complete work under the subcontract for any reason, the Council must require Knutson to employ good faith efforts (GFE) for soliciting a replacement subcontractor.

As the grantee of funds provided by the FTA, the Council and its Office of Equal Opportunity (OEO) are responsible for monitoring Knutson to ensure that it meets or surpasses its 15% DBE goal. 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*

This review was limited to an evaluation of compliance with Council DBE policies and operating procedures, contract requirements and FTA regulations and guidance as practiced on the TFS construction contract awarded to Knutson.

## *Methodology*

To gain an understanding of the practices conducted by TFS and Council OEO personnel to comply with DBE requirements, the following methods of inquiry were used:

- Hennepin County, HCRRA, Knutson and Council 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.
- Hennepin County, HCRRA, Knutson and Council policies and procedures were reviewed.
- FTA regulations, guidance, best practices and prior internal Council DBE audits were reviewed.

# OBSERVATIONS

## Office of Equal Opportunity Monitoring Activities

Office of Equal Opportunity Procurement Policy 2008 states, “OEO Staff uses the monthly DBE Progress/Project Reports, site visits and payment verification to monitor Council projects that have been assigned DBE goals.” The monthly DBE Progress/Project Report (Report), submitted by Knutson to the HCRRA Project Office and then forwarded to OEO, provide OEO staff updated DBE participation status. However, the data appearing on the Report needs to be verified by OEO staff to ensure accurate DBE participation reporting (see DBE Monitoring - Monthly DBE Progress/Project Report, below). Work site visits are another important method of validating that the DBE firms reported by Knutson are doing the work and in the manner represented by the data included on the Reports (see DBE Monitoring – Work Site Visits, below). Verifying with the DBE that the firm received payment for its work throughout the project and in amounts corresponding with that reported by Knutson is another critical monitoring activity (see DBE Monitoring – Payment Verification, below). Each of these activities was reviewed by audit as discussed in the following paragraphs.

## DBE Monitoring - Monthly DBE Progress/Project Report

An OEO employee is assigned to the TFS project to ensure compliance with Council and FTA regulations and that Knutson meets its contracted DBE goal. Audit reviewed the Reports submitted by Knutson to determine the accuracy of the information they contained, a review similar to that required of the OEO representative. 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 with the contractor, the contractor’s commitment to meeting those goals. In addition, when identified during site visits or through discussions with Knutson and DBE subcontractor personnel, OEO personnel did question and review change orders and 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 as required by its policy. Reliance was made upon the determination of Knutson personnel to accurately report participation data.

During the review, Audit evaluated numerous correspondence between Knutson and OEO personnel regarding varying issues affecting many DBE subcontractors. The issues discussed included verification of the DBE serving a commercial useful function, removal of DBE scoped work, verification of DBE status, substitution of DBEs and non-DBEs and the percentage of allowable participation of

suppliers, brokers and installation firms. It was evident that Knutson was determined to properly identify DBE performance and that a congenial, professional and helpful relationship existed between Knutson and OEO personnel.

Audit's review of the Reports disclosed the following:

- A DBE was added to the report in January 2013. From then through March 2013, its contract amount was not added to the Report total and the "Paid this Request" and "Paid to Date" amounts were not included in the Report totals for January.
- Through September 2013, payments for all work on the TFS project equaled 57.43% of the contracted amount. Payments to DBE firms by the prime contractors were reported to be 54.64% of the subcontract amounts; Audit determined that this rate was 51.27%. Although payments to DBE firms trail payments to all firms by 6.16 percentage points, the project is only 57% complete, allowing time for DBE payments to catch up.
- The types of errors found include:
  - Incorrect contract values: For three of nine months reviewed, the individual DBE contract amounts did not add to the total.
  - Incorrect current period payment amounts: Eight subcontractors were reported at greater total individual monthly payments than the "Total DBE Contract" amount, one subcontractor was reported at a greater total of both individual monthly payments and payments through September 2013 than the reported subcontract amount, and three subcontractors reported an amount paid to date being greater than the DBE contract.
  - Incorrect total payment amounts: Four subcontractors included values for individual monthly payments; however, there was a "0" balance under "Total Paid to Date;" one recorded the opposite situation.
  - Incorrect DBE payment percentages: Through September 2013, 42 active subcontracts appeared on the Report, 21 of which reported a greater total of individual monthly payments compared to the "Total Paid to Date" and 20 reported lesser amounts. Only one contract was correct.

During the audit, OEO personnel stated that the current Report format was not adequate and that it would have to be revised. They were aware of, and assisted in the revision of, the Report being used on a test basis on the Green Line project. However, it was unclear to them if the same report would also be used for a design-build project such as TFS. This indicates a need for better communication between OEO staff.

## **DBE Monitoring – Participation Calculations**

Audit also reviewed the firms listed on the Reports to determine if they were credited for the proper amount of DBE participation, with the following results (see Exhibit I for an explanation of counting DBE participation and Exhibits II and III for summary data and analysis).

Through September 2013, DBE participation was reported to be 17.60% contracted (see Exhibit II) but only 16.74% paid (a 0.86 percentage point difference – see Exhibit III). Adjusting for overstatements of suppliers and trucking firms (see Exhibits II and III), Audit calculated these participation rates to be 17.57% and 15.68%, respectively, a 1.89 percentage point difference.

Knutson reported DBE contract participation through September 2013 to be 17.595%, whereas Audit calculated 17.567%. DBE payments to date were reported at 16.740%, whereas Audit calculated 15.682%. The contract data appearing on the Reports indicates that Knutson will meet the contracted DBE goal. Although Audit has identified variances that indicate lower participation rates than those reported, it appears that Knutson will meet its contractual DBE goal of 15%.

## **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 is allowable for counting toward the 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 2008 OEO – DBE/EPA DBE Work Instructions include the following directions for fulfilling the federal site visit monitoring requirement:

Office of Equal Opportunity (OEO) staff will visit each project site where DBE firms have contracts, when the project is between  $\frac{1}{4}$  and  $\frac{1}{2}$  complete. The number of times a project will be visited will be determined by the number of DBE firms and the scheduling of those firms on the project. Projects with multiple DBEs or with any questionable issues defined by the Council Authorized Representative (CAR) may be visited with more frequency.

The OEO specialist that conducted work site visits on the TFS project interpreted this to require at least one visit for each DBE firm. Audit verified that 24 firms were visited; 65% of the 37 DBE firms working on the project.

Audit also compared the DBE firms appearing on the Reports to those visited by OEO personnel and observed that two firms appeared on the Reports that were not visited. Both firms had been added to the Report in either August or September 2013, giving OEO sufficient time to conduct site visits prior to the end of 2013.

## **DBE Monitoring – Site Visit Findings**

From the 35 site visits identified above, four questionable circumstances arose that required further review by OEO personnel. Audit reviewed the four case files with the following results:

- Two visit reports recorded the same issue with a single DBE firm. The issue was researched by OEO personnel and a decision rendered. However, OEO has not followed up to calculate the appropriate amount of DBE participation that should appear on the Monthly DBE Progress/Project Report.

- One DBE firm was reviewed to determine if it was a supplier or broker. The determination was made that it qualified as a supplier and contract (but not payment) participation was accurately reflected on the Report.
- Audit could find no record of either a follow-up determination or participation calculations for one firm.

## DBE Monitoring – Site Visit Tracking Log

Audit reviewed the OEO site visit tracking log (Log) maintained by OEO personnel. Three of the 35 visit reports matched directly with the information included on the Log. The other 32, in addition to the four identified above, resulted in the following observations:

### # of Visit Reports

|    |  |
|----|--|
| 9  | Visit Report is available from OEO records, but is not included on the Log           |
| 4  | The Report number does not appear on the Log and/or does not match                   |
| 3  | Audit could not locate a visit report among OEO records                              |
| 21 | The visit report was not finalized and signed by supervisor until 11-8-2013          |
| 1  | The visit report states "No" potential violation to DBE regulations when one existed |
| 1  | Incorrect date of the visit was included on the Log                                  |
| 4  | The space on the Log reserved to identify if an issue existed was left blank         |
| 1  | The visit was written up twice, using two different report numbers                   |

Overall, OEO personnel working on the TFS project have not maintained an accurate site visit tracking log. In addition, two of the three firms that required additional review were not finalized. Audit found no documentation for one and the amount posted as paid-to-date on the Report for the other was not reduced to reflect its status as a supplier.

## 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. In addition, the use of tractor/trailer combinations adds complexity to calculating actual participation. Part 49, Section 26.55 of the Code of Federal Regulations (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.

The rules regarding counting trucking participation are different from those for other DBE firms (see Exhibit I). Knutson 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 rather than monthly reports of participation (the Site Visit Plan requires quarterly reporting). Office of Equal Opportunity personnel first evaluated trucking participation in September 2013, 14 months after construction began. Audit

subsequently reviewed trucking participation and determined that OEO's calculation would under report participation by **\$156,142**. The earliest that the correct trucking participation could appear on the Monthly DBE Report would be for the period ending November 30, 2013. As a result of this and other incorrect participation data included on the Report, inception to date payments appearing on the September 2013 Report were overstated by \$142,899.

## **DBE Monitoring – Periodic Meetings with Contractors**

Office of Equal Opportunity personnel conducted monthly Joint DBE/AA Oversight meetings bringing together contractor, OEO and HCRRA representatives to discuss project DBE status. A review of the minutes from those meetings disclosed the following:

- Although not within the scope of this review, it was stated by two different parties that AET, the contractor for a \$559,314 testing, inspection, environmental oversight and noise/ vibration monitoring services contract, pays its subcontractors before receiving payment from HCRRA.
- During the February 2013 meeting a discussion arose regarding the need for a revised Report.
- Each meeting included a discussion of DBE contractors that had been added or removed.
- Each meeting included a discussion regarding current progress toward the project DBE goal.

## **DBE Monitoring – Payment Verification**

In June 2013, OEO personnel sent payment verification notices to 23 firms that had worked on the project through May 2013. Fourteen of those firms responded, 12 of which resulted in variances between the information the DBE firm reported and the data appearing on the May 2013 DBE Progress/Project Report. The following issues became apparent after reviewing those variances:

- The verification process does not accurately reflect payments.
- The verification form is not uniformly understood.
- The amount identified as "\$ Amount DBE Paid This Pay Request" on the Monthly DBE Progress/Project Report is the amount being requested for payment, it has not actually been paid to the DBE firm. This can lead to an inaccurate interpretation of the Report data.

## **Consideration from the Blue Line**

Recommendation #1 from an earlier audit conducted on the Blue Line (Disadvantaged Business Enterprise Participation in the Hiawatha Light Rail Project, Construction Phase, dated September 23, 2005) 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 TFS project. Other than trucking firms which were individually reviewed and participation calculated, three firms listed on the Blue Line as possibly having participation problems were also initially listed as TFS project DBE firms. Each of these firms was subsequently reviewed by OEO personnel with the following results:

- One was removed from the project prior to beginning work; it failed to serve a CUF.
- One was removed from the project prior to beginning work; its work scope was deleted.
- One was approved for 100% participation credit.



## Considerations from the Green Line

Audit conducted a review of DBE utilization on the Green Line, the results of which were included in its report, Central Corridor Light Rail Transit (Green Line) Disadvantaged Business Enterprise (DBE) Review (Green Line Report). Although the final date of that report is November 20, 2013, Audit discussed the findings with OEO personnel throughout the audit and the issues identified during the Green Line review were known to OEO personnel prior to the start of the TFS review.

Recommendations #3 and #4 of the Green Line Report were specific to the Green Line. The other two recommendations are also applicable to the TFS construction project and are discussed below.

- Recommendation #1: “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/Project 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.”
    - OEO management responded that, “OEO has begun the reevaluation of the Progress Report and other tools in order to provide accurate monthly DBE participation rates.”
    - OEO Management stated work will be completed during the first quarter of 2014. Audit will evaluate implementation of this recommendation later in 2014.
  - 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/Project reports.”
    - OEO management stated that “OEO is revising its CUF Site Visit methodology for monitoring large construction projects. .... An electronic monitoring system designed to automate and capture all the required information would dramatically improve OEO’s monitoring efforts.”
    - OEO Management stated work will be completed during the first quarter of 2014. Audit will evaluate implementation of this recommendation later in 2014.
- Recommendation #2: “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.”
  - OEO management responded, stating “OEO envisions the technology based monitoring system, referenced in the first management response, to include financial transaction information for all construction tiers.”
  - Again, OEO Management stated work will be completed during the first quarter of 2014. Therefore, Audit will evaluate implementation of this recommendation later in 2014.

# CONCLUSIONS

Office of Economic Opportunity personnel have maintained open communications through monthly meetings with Knutson and HCRRA project personnel, DBE subcontractors and FTA oversight personnel. Throughout the audit, both OEO and Knutson personnel have shown knowledge of the Council's DBE program plus a commitment to abide by DBE regulations and maintain current and accurate DBE participation data. In addition, the assignment of an OEO specialist to the TFS project indicates a commitment by OEO to provide resources to support the DBE program. Although communication, knowledge and commitment were evident, monitoring DBE firm participation toward the project's 15% goal is in need of strengthening as follows:

1. ***Although they complied in the spirit and intent of Council and FTA requirements for monitoring DBE participation on the Target Field Station construction project, Office of Equal Opportunity personnel did not fully comply with specific requirements. In addition, the OEO – DBE/EPA DBE Work Instructions do not adequately align monitoring activities with project risk.***
  - a. The data appearing on the Monthly DBE Progress/Project Reports was not verified or reconciled by OEO personnel.
  - b. Personnel of the OEO conducted work site visits, which have been shown to be an effective way of identifying DBE participation errors. However, only 65% of the required site visits were conducted, and work site visit issues were not consistently followed through to correct participation data on the Monthly DBE Progress/Project Report.
  - c. The current work instructions imply that each firm should be visited at least once, but they are open to interpretation and, unless revised on a project basis as they were for the Green Line construction projects, they do not capture the additional risk that large projects carry.
  - d. Trucking firm DBE participation was not reviewed and corrected on a timely basis.
2. ***Monitoring forms, including the Monthly DBE Progress/Project Report, the DBE Verification Form and the Site Visit Log, used by OEO personnel need to more effectively capture required information.***
3. ***Some recommendations from prior DBE audits were incorporated by OEO personnel into their work on the Target Field Station project; others are yet to be resolved.***

Construction of the Target Field Station project began in July 2012 and through September 2013, is 57% complete. The data used in this report is current through September 2013 (Monthly DBE Progress/Project Report, trucking data), October 2013 (site visits) or November 2013 (payment verifications). Although final DBE monitoring results may vary from those presented in this report, Audit estimates that Knutson will meet its 15% DBE contract goal.

# 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 Target Field Station and all other construction projects having DBE goals is adequately monitored.**

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

Audit found numerous calculation errors resulting in incorrect reporting of DBE participation. The most common errors were found in participation dollars reported for suppliers and trucking firms, particularly in the dollars reported as being paid to the DBE firm. Accurate reporting of DBE participation on the Monthly DBE Progress/Project Report is essential to comply with FTA reporting requirements.

- b. **OEO personnel should perform construction project site visits in a manner and in the frequencies required by its work instructions, and follow through on issues raised.**

Site visits have proven to be a valuable monitoring tool for OEO personnel. Office of Equal Opportunity personnel performed only 65% of the required visits, four of which resulted in the need for additional analysis which was partially completed. However, the Monthly DBE Progress/Project Report was not revised to incorporate the necessary revisions, thereby affecting the accuracy of the information reported to the FTA.

**Management Response:** *The Office of Equal Opportunity (OEO) is examining the current monitoring tools used on the TFS project. All issues identified in the above recommendation will be incorporated into the revised tools and procedures. The updated forms used will continue to be in paper form until the technology to improve the process is procured.*

*The OEO – DBE Work Instructions are currently being revised. They will address all procedures raised in this report.*

**Staff Responsible:** *OEO Staff*

**Timetable:** *Manual Contract monitoring tool revisions completed by February 1st 2014; revised OEO – DBE Work Instructions completed by March 1st 2014.*

- 2. (Essential) – The OEO should conduct a review of the forms used to monitor DBE participation and revise them where appropriate. In addition, OEO should maintain internal forms used to control monitoring activities so that they are current, accurate and useful.**
- a. The Monthly DBE Progress/Project Report is difficult to understand and does not adequately capture the intended information. Personnel from OEO working on the Target Field Station project were aware of difficulties as early as February 2013. They were also aware of a new form being tested for the Green Line project, yet no effort has been expended to improve the form for TFS reporting.
  - b. The Payment Verification form used to verify actual payments received by DBE firms does not capture the intended information and is ineffective as a tool to verify if DBE firms have actually been paid. Payment verification is one of the monitoring activities expressly identified by FTA. The current tool used by OEO is not in compliance with that requirement.
  - c. An internally developed site visit monitoring log (Log) was developed to track site visit results. However, the Log was not current, contained numerous errors and when issues arose, DBE participation was not revised on the Monthly DBE Progress/Project Report, the report that OEO depends upon to provide accurate DBE participation data to the FTA.

**Management Response:** *The Office of Equal Opportunity is examining the current monitoring tools used on the TFS project. All issues found in Recommendation 2 will be incorporated into the revised tools and procedures. The updated forms used will continue to be in paper form until the technology to improve the process is procured.*

*The DBE progress report mentioned above was developed for the Green Line Civil East contract and was used as a test. It is still in test phase. The work on TFS was started before the test report was developed.*

**Staff Responsible:** *OEO Staff*

**Timetable:** *Revisions completed by February 1st 2014*

- 3. (Essential) Council OEO personnel should review and revise its OEO – DBE/EPA DBE Work Instructions to ensure that they are updated, prepared in acceptable Council format and include guidance to ensure that work site visits are conducted in number and frequency according to assessed project risk. In addition, each project should have a site visit plan prepared in advance of contract performance.**

The current OEO DBE monitoring work instructions are vague, do not provide for differing project risks and are not prepared to Council format. Work instructions should provide explicit guidance and be prepared according to Council standard format, including number, date and revision identification. Regarding DBE work instructions, they should also be prepared so that government auditor and regulatory personnel can clearly determine Council practices. In addition, to effectively implement project work site visit monitoring requirements, a project specific plan should be prepared to address specific project risk.

**Management Response:** *The OEO – DBE Work Instructions are currently being revised. The revised Work Instructions will address monitoring procedure concerns raised in this report.*

**Staff Responsible:** *OEO Staff*

**Timetable:** *March 1st 2014*

- 4. (Significant) Council OEO personnel should revise the procedures for calculating DBE trucking participation to ensure that the data received from trucking brokers is accurate and that updates are made by contractors to the monthly DBE Progress/Project reports on a timely basis.**

Personnel from OEO reviewed trucking participation 14 months after work began, 11 months later than required by OEO procedures. In addition, the initial calculations would have under reported participation by \$156,142. Through November 2013, trucking payments reported on the Monthly DBE Progress/Project Report had yet to be corrected. The Report is the basis used to report DBE participation to the FTA at the monthly Project Management Oversight Committee meetings. The Council would be in non-compliance with FTA regulations by reporting incorrect DBE participation data.

**Management Response:** *OEO is currently revising the DBE trucking participation tools and methodology (work instructions).*

**Staff Responsible:** *OEO Staff*

**Timetable:** *DBE trucking participation tool completed by February 1st 2014; OEO Work Instructions by March 1st 2014.*

**Metropolitan Council  
Program Evaluation & Audit  
Target Field Station DBE Review**

**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).

**Metropolitan Council  
Program Evaluation & Audit  
Target Field Station DBE Review**

**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?

**Metropolitan Council  
Program Evaluation & Audit  
Target Field Station DBE Review**

**Exhibit II: Audit Adjusted DBE Contract & Payment Participation  
Exhibit III: Monthly Progress/Project Report Analysis**

| <b>EXHIBIT II</b><br>Total Contract | <b>DBE Contracted</b> |            |         | <b>Audit Adjustments</b> |          | <b>Adjusted</b> |              |               |       |            |
|-------------------------------------|-----------------------|------------|---------|--------------------------|----------|-----------------|--------------|---------------|-------|------------|
|                                     | Date                  | Amount     | Percent | Supplier                 | Trucking | Adjusted DBE    | Adj. Percent | Contract Goal | Var.  | % Complete |
| 72,326,573                          | 9/30/13               | 12,725,993 | 17.60%  | (10,130)                 | (10,187) | 12,705,676      | 17.57%       | 15.04%        | 2.53% | 57%        |

| Total Payment | <b>DBE Payment</b> |           |         | <b>Audit Adjustments</b> |           | <b>Adjusted</b> |              |               |       |            |
|---------------|--------------------|-----------|---------|--------------------------|-----------|-----------------|--------------|---------------|-------|------------|
|               | Date               | Amount    | Percent | Supplier                 | Trucking  | Adjusted DBE    | Adj. Percent | Contract Goal | Var.  | % Complete |
| 41,537,319    | 9/30/13            | 6,953,249 | 16.74%  | (296,439)                | (142,899) | 6,513,911       | 15.68%       | 15.04%        | 0.64% | 57%        |

**EXHIBIT III**

| Total Contract | <b>DBE Contracted</b> |         | <b>Audit Adjustments</b> |              |              | Var.   | # of DBEs | Count Errors |
|----------------|-----------------------|---------|--------------------------|--------------|--------------|--------|-----------|--------------|
|                | Amount                | Percent | Adjustments              | Adjusted DBE | Adj. Percent |        |           |              |
| 72,326,573     | 12,725,993            | 17.60%  | (20,317)                 | 12,705,676   | 17.57%       | -0.03% | 42        | 2            |

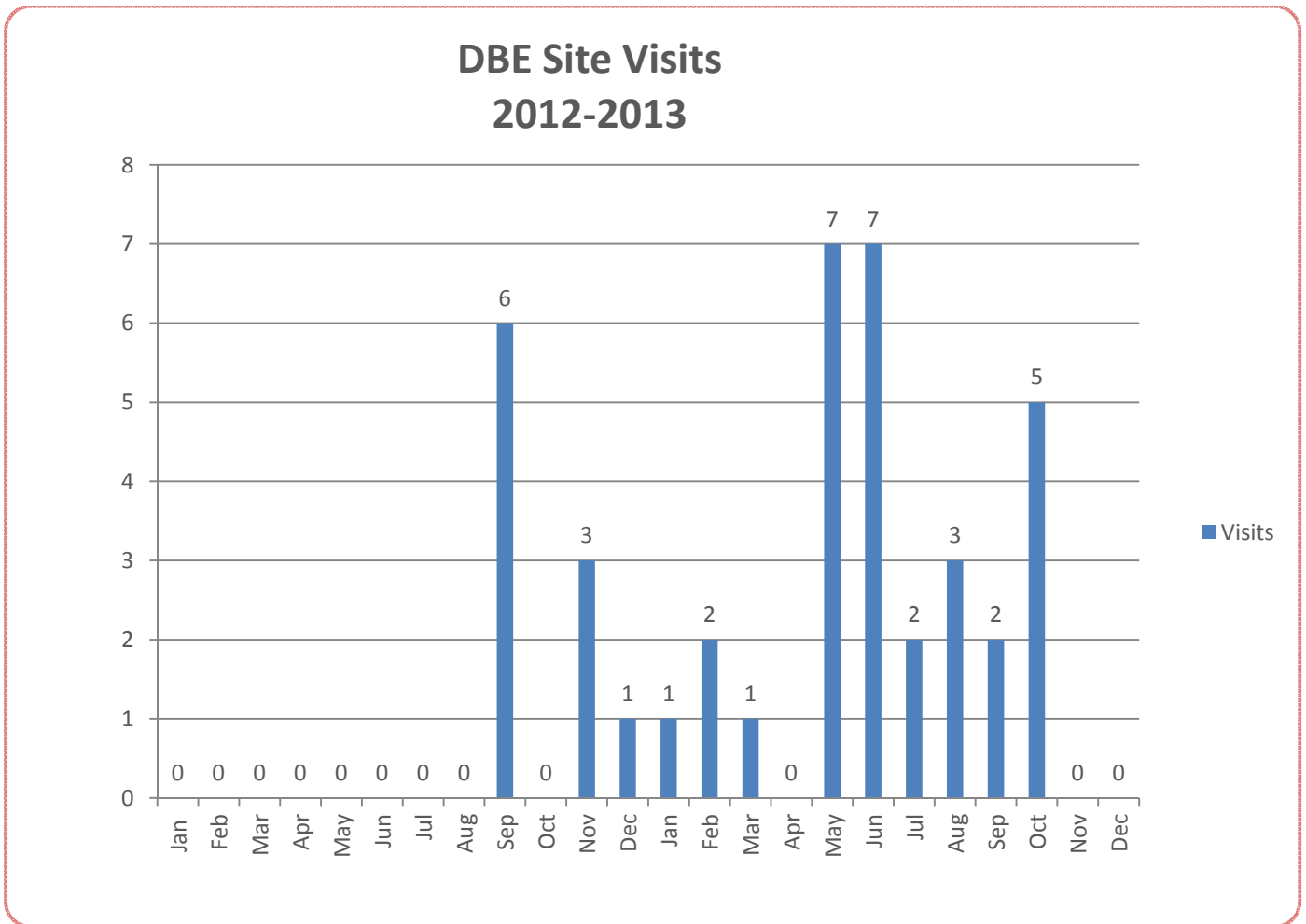
| Total Payment | <b>DBE Payments</b> |              | <b>Audit Adjustments</b> |                 |              | Var.   | # of DBEs | Count Errors |
|---------------|---------------------|--------------|--------------------------|-----------------|--------------|--------|-----------|--------------|
|               | DBE Payment         | Percent      | Adjustments              | Adjusted DBE    | Adj. Percent |        |           |              |
| 41,537,319    | 6,953,249           | 16.74%       | (439,338)                | 6,513,911       | 15.68%       | -1.06% | 42        | 6            |
|               | <b>Variance</b>     | <b>0.86%</b> |                          | <b>Variance</b> | <b>1.89%</b> |        |           |              |

Note: Data is through September 2013.



Metropolitan Council  
Program Evaluation & Audit  
Target Field Station DBE Review

Exhibit IV: DBE Contractor Site Visits





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St Paul, MN 55101-1805