

Summary

MnDOT Workforce and Contracting Goals

Key Facts and Findings:

- The Minnesota Department of Transportation (MnDOT) administers state workforce goals for the purpose of increasing the participation of *workers* who are women and people of color on state-funded MnDOT construction contracts. (p. 6)
- MnDOT also administers contract preference and goal programs—including the Targeted Group Business and Veteran-Owned Small Business programs—for the purpose of increasing the participation of *businesses* that are owned by women, people of color, people with a substantial physical disability, and veterans on state-funded MnDOT contracts. (pp. 8-10)
- MnDOT construction contracts that started during fiscal years 2018 through 2020 rarely met the state’s workforce goals. (p. 40)
- MnDOT has limited authority in law to enforce state workforce goals. (p. 20)
- For the vast majority of its state-funded construction contracts in recent years, MnDOT did not regularly evaluate or monitor contractors’ efforts towards meeting the workforce goals. (p. 24)
- One-half of the small number of contracts we reviewed met MnDOT contracting goals; however, MnDOT often did not clearly document how it determined whether contractors met the goals. (p. 86)
- Payments to certified targeted group and veteran-owned businesses comprised 11 percent of total payments for contracts in our review; data suggest that certain demographic groups received

a substantially greater share of payments than others. (pp. 89, 91)

- Although MnDOT made improvements in 2020, its monitoring of the extent to which contractors met contracting goals for state-funded contracts remains limited. (p. 82)
- Contract preferences rarely changed which business won the contract for the MnDOT contracts we reviewed. (p. 55)
- MnDOT limits the maximum dollar value of contract preferences for construction contracts beyond what is required by law. (p. 54)

Key Recommendations:

- The Legislature should consider the extent to which it wants to prioritize the state’s workforce goals and clarify the role of contracting state agencies accordingly. (p. 45)
- MnDOT should take a more engaged role in overseeing workforce goals for a greater share of its state-funded contracts. (pp. 34-35)
- MnDOT should better monitor the extent to which contractors are meeting both workforce and contracting goals for state-funded contracts. (pp. 36, 39, 83)
- MnDOT should reconsider its current cap on contract preferences. (p. 60)
- MnDOT and the Legislature should consider additional strategies that could enable MnDOT to more effectively fulfill the purpose of its contracting goal programs, taking into account the state’s broader policy priorities. (p. 99)

MnDOT has limited authority to enforce state workforce goals, and certain aspects of the agency’s contract preference and goal programs have had minimal effect.

Report Summary

MnDOT's Office of Civil Rights implements **state workforce goals** that seek to increase the diversity of the on-the-ground construction workers who work on state-funded contracts.¹ Whereas workforce goals seek to increase the diversity of *workers* on MnDOT contracts, MnDOT also implements **contracting goal and preference programs** that seek to increase the diversity of *business owners* providing services on MnDOT contracts.

Workforce Goals

State workforce goals specify targets for the share of hours worked (or in training) by women and people of color on state-funded construction projects. The Minnesota Department of Human Rights (MDHR) establishes the goals, which vary by region of the state. Contracting state agencies—including MnDOT—are required by law to include state workforce goals in all state-funded construction contracts exceeding \$100,000.

In recent years, MnDOT's state-funded construction contracts rarely met the state's workforce goals.

Only 6 percent of MnDOT construction contracts over \$100,000 that began in fiscal years 2018 through 2020 met state workforce goals for *both* women and people of color. A greater share (33 percent) of contracts met the workforce goal for *either* women or for people of color. Sixteen percent of contracts met the workforce goal for women, while 23 percent of contracts met the workforce goal for people of color.

State workforce goals apply to all state-funded construction contracts in excess of \$100,000; however, MnDOT has chosen a different threshold—\$5 million—to guide its approach to implementing the workforce goals.

MnDOT staff said that they request that bidders acknowledge various equal opportunity requirements—including the workforce goals—before submitting their bids, regardless of contract cost. Beyond this acknowledgement,

however, MnDOT does little to implement workforce goals for contracts for which the winning bid was \$5 million or less. For example, for these contracts, MnDOT does not determine whether contractors plan to meet state workforce goals, or whether contractors made an adequate effort to meet the goals prior to awarding the contracts. Further, after awarding these contracts, MnDOT does not systematically track contractors' progress towards meeting the workforce goals, or determine whether the contracts ultimately met the goals when the project is complete.

The winning bid for MnDOT contracts that were subject to the workforce goals was \$5 million or less for 93 percent of contracts in our review period.² As a result, MnDOT did little to implement state workforce goals for the vast majority of its state-funded construction contracts in recent years. We recommend that MnDOT take a more engaged approach to overseeing state workforce goals for a greater share of its state-funded contracts.

MnDOT does not have clear authority in law to more actively enforce state workforce goals.

State law gives contracting state agencies such as MnDOT limited authority to enforce the state workforce goals. Generally, the law merely requires contracting state agencies to provide information to MDHR and contractors about the state workforce goals and other equal opportunity-related contract requirements. State law does not clearly give MnDOT the authority to sanction contractors in the event a contractor does not meet the workforce goals.

We recommend that the Legislature consider the extent to which it wants to prioritize the state's workforce goals, and clarify the role of contracting state agencies accordingly.

Contracting Goals and Preferences

MnDOT's two contracting goal and preference programs for state-funded contracts—the Veteran-Owned Small Business (VET) Program and the Targeted Group Business (TGB) Program—seek to increase the

MnDOT contracts we reviewed rarely met state workforce goals.

¹ "State-funded contracts" refers to contracts funded solely by state dollars.

² These contracts accounted for 31 percent of the total cost of the winning bids for contracts starting in fiscal years 2018 through 2020.

participation of business owners who are veterans or members of targeted groups on certain MnDOT contracts.³ As part of these programs, MnDOT may establish targets—referred to as contracting goals—for the amount of spending on a given contract that goes to businesses that are owned and operated by members of these groups.

We confirmed that half of the small number of state-funded contracts we reviewed met MnDOT contracting goals; however, MnDOT often did not clearly document how it determined whether contractors met the goals.

We had hoped to independently verify how often contractors met TGB and VET contracting goals for all contracts in our review period. However, due to MnDOT’s manual approach to determining whether contracts met the goals, we were unable to evaluate the extent to which contractors met the contracting goals for all contracts.

Instead, we reviewed eight contracts and found that four contracts met the TGB and VET contracting goals, while one did not, and one went through a separate process. However, official contract files were missing important documents related to contracting goals. As a result, we were unable to confirm whether or not the contractor met the goals for the two remaining contracts in our review. We recommend that MnDOT more thoroughly document contracting goal processes and decisions for each contract.

Payments to certified businesses comprised 11 percent of total contract payments for contracts in our review; data suggest that certain demographic groups received a substantially greater share of payments than others.

We also evaluated what share of MnDOT contract expenditures went to certified businesses. For state-funded construction and professional/technical contracts starting in fiscal years 2018 through 2020, MnDOT’s

total contract expenditures were about \$473 million. Approximately \$52 million, or 11 percent, of those contract expenditures went to certified businesses. Of those contracts, payments to certified businesses went overwhelmingly to targeted group rather than veteran-owned businesses—92 percent versus 8 percent, respectively.

Payments to certified businesses were not evenly distributed across the demographic groups eligible for the TGB program. For construction contracts beginning in fiscal years 2018 through 2020, businesses owned by White women received 81 percent of MnDOT payments to prime targeted group-certified contractors, while businesses owned by Native Americans received 19 percent of payments.⁴ In contrast, MnDOT did not make any payments for construction contracts to prime targeted group-certified contractors identifying as Black/African American, Asian, or Hispanic/Latino.

We recommend that MnDOT and the Legislature consider additional strategies that could enable MnDOT to more effectively fulfill the purpose of these programs, while weighing the state’s broader policy priorities.

Although MnDOT made improvements in 2020, its monitoring of contractors’ progress towards meeting contracting goals for state-funded contracts remains limited.

According to MnDOT staff, prior to 2020, ongoing monitoring of contractor performance on TGB and VET contracting goals took place on an ad hoc basis. In 2020, MnDOT began to increase its monitoring of these contracting goals by tracking whether certified subcontractors were paid in a timely manner.

Despite this change, the agency’s monitoring of contracting goals for state-funded contracts remains limited. For example, MnDOT does not have automatic reporting on contracting goals for state-funded projects, such as monthly reports that show contractors’

Data suggest that certain demographic groups benefited from MnDOT’s contracting goal programs more than others.

³ Targeted group members include individuals who are women, people of color, or people with a substantial physical disability. Veteran-owned and targeted group businesses—referred to as “certified businesses”—must be certified by the Minnesota Department of Administration or the U.S. Department of Veterans Affairs.

⁴ Prime contractors are businesses that sign a contract directly with MnDOT.

MnDOT's contract preferences did little to increase the number of certified contractors working on MnDOT projects in recent years.

progress towards meeting the goals. For state-funded contracts, MnDOT staff can only monitor contractors' performance manually.

State law does not explicitly require MnDOT to monitor the extent to which contractors meet contracting goals. Nevertheless, we recommend that MnDOT improve its monitoring approach to ensure contractors are meeting the goals or making ongoing good faith efforts to do so.

For recent state-funded MnDOT contracts, contract preferences rarely changed which business won the contract.

In addition to contracting *goals*, MnDOT may apply contract *preferences* for the purpose of increasing the share of targeted group and veteran-owned businesses that participate on MnDOT contracts. For construction contracts, preferences make certified businesses more cost-competitive by effectively reducing the cost of their bids. MnDOT applies this discount, or "preference," to the certified business's bid for the purpose of comparing that bid to the other bids on the contract. Preferences do *not* reduce actual bid amounts or change the amount of money the certified

business would receive should MnDOT award the contract to that business. MnDOT applies the preference amount when it calculates the low (or best) bidder for a given construction or professional/technical contract.

The low bidder switched from a non-certified business to a certified business as a result of a preference for only 3 of MnDOT's 207 construction contracts in our review period (1 percent). Of the 208 professional/technical contracts we reviewed, the winning bidder switched from a non-certified business to a certified business as a result of a preference on 11 contracts (5 percent).

State law limits the preference amount that MnDOT can provide to certified businesses to 6 percent of the certified business's bid amount. However, for some contracts, MnDOT limits the maximum dollar value of contract preferences beyond what is required by law. While MnDOT is legally permitted to establish this lower contract preference, we recommend that MnDOT reconsider its cap on contract preferences to increase the potential impact of the preference and to better align with current Department of Administration practices.

Summary of Agency Response

In a letter dated May 20, 2021, Department of Transportation Commissioner Margaret Anderson Kelliher said that "MnDOT's Office of Civil Rights (OCR) is committed to ensuring equal opportunity for all businesses and personnel on MnDOT projects." She explained that MnDOT has taken recent steps to enhance its workforce and contracting goal programs based on discussions with the Office of the Legislative Auditor (OLA), including revising documentation practices, strengthening contractor accountability, and working with other state agencies on process improvements and enforcement. Commissioner Anderson Kelliher added that MnDOT will conduct a "cost analysis" regarding some of OLA's additional recommendations. The commissioner stated that MnDOT "welcomes any clarity the Legislature can provide relating to priorities and the role of contracting agencies" with regard to the state workforce goals. Further, the commissioner said that "MnDOT is committed to working with the Legislature...on strategies to further our mutual objectives" regarding MnDOT's contracting goals.

The full evaluation report, *MnDOT Workforce and Contracting Goals*, is available at 651-296-4708 or:
www.auditor.leg.state.mn.us/ped/2021/mndotgoals.htm