

State Water Resources Control Board
Division of Financial Assistance (Division)
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Guidelines for Clean Water State Revolving Fund (CWSRF) Program
Disadvantaged Business Enterprise (DBE) and Approval of Award (AOA)

DBE REQUIREMENTS

The DBE Program is an outreach, education, and goaling program designed to increase the participation of DBEs. The DBE Program encompasses many of the components of the former Minority/Women Owned Business Enterprise (MBE/WBE) Program and includes many new features.

Financial Assistance recipients should award a "fair share" of sub-agreements to small, MBE/WBE businesses. Since each is a separate entity, the objective is to assure that each of these business entities is given the opportunity to participate in sub-agreement financial assistance agreements. This applies to all sub-agreements for equipment, supplies, construction and services.

How to Achieve the Purpose of the Program

Recipients of financial agreements are required to seek, and are encouraged to utilize, MBE/WBE businesses for their procurement needs under the financial agreement. The key functional components of the DBE Program are as follows.

- Fair Share Objectives
- Six Good Faith Efforts
- Contract Administration Requirements
- MBE/WBE Reporting
- MBE/WBE Certification

DBEs, MBEs and WBEs

DBEs are:

- entities owned and/or controlled by socially and economically disadvantaged individuals as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) (10% statute), and Public Law 102-389 (42 U.S.C. 4370d) (8% statute), respectively;
- a Small Business Enterprise (SBE);
- a Small Business in a Rural Area (SBRA);
- a Labor Surplus Area Firm (LSAF); or
- an Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

MBEs are:

- entities that are at least 51% owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively.

WBEs are:

- entities that are at least 51% owned and/or controlled by women.

Certifying MBE and WBE firms

Under the DBE Program, entities can no longer self-certify. Certifications will be accepted from:

- The Small Business Administration(SBA) (both SBA 8(a) program certifications and SBA Small Disadvantaged Business (SDB) Program self-certifications);
- The Department of Transportation's state implemented DBE Certification Program (with U.S. citizenship);
- Tribal, State and Local governments; and
- Independent private organization certifications.

If an entity holds one of these certifications, it is considered acceptable for establishing MBE or WBE status under the DBE Program.

GOOD FAITH EFFORT (GFE)

The GFE is required for all financial agreement recipients to ensure that all DBEs have the opportunity to compete for procurements funded by financial assistance dollars.

Six Good Faith Efforts

- Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Tribal, State and Local Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. Posting solicitations for bids or proposals for a minimum of 15 calendar days before the bid.
- Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Tribal, State and Local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- Use the services and assistance of the SBA and Minority Business Development Agency of the Department of Commerce.
- If the prime contractor awards subcontracts, require the subcontractor to take the above steps.

ADMINISTRATION REQUIREMENTS

- A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient;
- A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor;
- If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six GFEs if soliciting a replacement subcontractor; and
- A recipient must require its prime contractor to employ the six GFEs even if the prime contractor has achieved its fair share objectives.

Forms to be submitted with the GFE:

- DBE Contractor/Subcontractor Certification
- DBE Selected Prime Contractor/Recipient
- DBE Good Faith Effort Certification By Recipient
- DBE Bidders List – Contractor/Subcontractor

FORM	REQUIREMENT	PROVIDED BY	COMPLETED BY	SUBMITTED TO
DBE Contractor/Subcontractor Certification	Subcontractor required to provide proof of DBE certification	Prime Contractor	Subcontractor	Prime Contractor
DBE Selected Prime Contractor/Recipient	Prime Contractor/Recipient list selected DBEs	Recipient	Recipient	SWRCB
DBE Good Faith Effort Certification By Recipient	Recipient certifies that Prime Contractor meets DBE requirements	Recipient	Recipient	SWRCB
DBE Bidders List – Contractor/Subcontractor	Provides Recipients with a database of DBE Prime Contractors and Subcontractors	Recipient	Recipient	SWRCB

BIDDERS LIST REQUIREMENTS

The Bidders List is to provide the recipient receiving financing agreements, who conduct competitive bidding with as accurate of a database as possible, about the universe of MBE/WBE and non-MBE/WBE prime contractors and subcontractors.

- A recipient of a financial agreement to capitalize CWSRF funds also must require entities receiving funds to create and maintain a Bidders List if the recipient of the financing agreement is subject to, or chooses to follow, competitive bidding requirements;
- The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts including both MBE/WBEs and non-MBE/WBEs; and
- The Bidders List must be kept until the recipient is no longer receiving funding under the agreement.

Information Retained on the Bidders List

1. Entity’s name with point of contact;
2. Entity’s mailing address and telephone number;
3. The project description on which the entity bid or quoted and when;
4. Amount of bid/quote; and
5. Entity’s status as a MBE/WBE or non-MBE/WBE.

AOA REQUIREMENTS

The DBE GFE is one element of the AOA process summarized below. The AOA request package submitted to the Division for approval is the final step and must contain the following:

1. A completed AOA form (original must be signed by the recipient's authorized representative or designee); and
2. All of the AOA attachments in accordance with the AOA instructions, if not previously submitted.

Once a bidder is selected, the prime contractor should compile the information required by the GFE process. **All information supporting the GFE must be submitted at bid opening.** Recipient shall review the successful bidder's records closely to be sure that the GFE was made. Failure of either the bidder or prime contractor/subcontractor to follow the GFE and provide the necessary information could jeopardize funding of the project. The following situations and circumstances require action as indicated:

1. If the apparent successful low bidder was rejected, a complete explanation must be provided;
2. Contractors must provide written evidence that they are certified. Self certification is not acceptable. Contractors must be certified at bid opening; and
3. Failure of the apparent low bidder to perform the GFE *prior* to bid opening will result in its bid being declared non-responsive. The construction contract may then be awarded to the next low, responsive, and responsible bidder that meets the requirements or the recipient may re-advertise the project.

Each procurement contract signed by the Recipient must include the following term and condition:

“The contractor shall not discriminate on the basis of race, color, national origin or sex in their performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract.”

Reporting Requirements

For the duration of the construction contract, all prime contractors and subcontractors will be required to submit to SWRCB reports of progress made in fulfilling the GFE in the Semi-Annual Report submitted by April 10 and October 10 of each fiscal year on a Utilization Report form (UR-334). Failure to provide this information as stipulated in the financial agreement language will be cause for withholding disbursements.

CONTACT FOR MORE INFORMATION

SWRCB – CWSRF Barbara August 916-341-6952 baugust@waterboards.ca.gov

SWRCB – CWSRF Susan Damian 916-341-5494 sdamian@waterboards.ca.gov.

EPA Region 9 - Joe Ochab 415-972-3761 ochab.joe@epa.gov.

EPA Headquarters - Veronica Squirrell 202-564-5347 squirrell.veronica@epa.gov.

EPA OSBP Headquarters Indirect Procurement Team:

Kimberly Patrick, Team Leader: 202-566-2605 patrick.kimberly@epa.gov.

Samuel Peterson, Program Analyst: 202-566-1510 peterson.samuel@epa.gov.

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
CONTRACTOR SUBCONTRACTOR CERTIFICATION**

Firm Name:	Phone:
Address:	
Principal Service or Product:	Bid Amount \$

PLEASE INDICATE PERCENTAGE OF OWNERSHIP BELOW

<input type="checkbox"/> DBE _____% Ownership	
<input type="checkbox"/> Prime Contractor	<input type="checkbox"/> Supplier of Material/Service
<input type="checkbox"/> Subcontractor	
<input type="checkbox"/> Sole Ownership	<input type="checkbox"/> Corporation
<input type="checkbox"/> Partnership	<input type="checkbox"/> Joint Venture
Certified by:	Title:
(Original signature and date required)	
Name:	Date:

NOTE: Contractors can no longer self-certify. They must be certified by EPA, Small Business Administration (SBA), Department of Transportation (DOT) or by State, Local, Tribal or private entities whose certification criteria match EPA's. Proof of Certification must be provided. A copy of the contractor certification must be submitted with this form.

This form must be submitted at Bid Opening.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SELECTED PRIME CONTRACTOR/RECIPIENT

CONTRACT RECIPIENTS NAME		CONTRACT NO. OR SPECIFICATION NO.	
PROJECT DESCRIPTION		PROJECT LOCATION	
PRIME CONTRACTOR INFORMATION			
NAME AND ADDRESS (Include ZIP Code, Federal Employer Tax ID #)		<input type="checkbox"/> MBE	<input type="checkbox"/> WBE
PHONE		AMOUNT OF CONTRACT\$	
DBE INFORMATION			
<input type="checkbox"/> NONE			
<input type="checkbox"/> DBE		NAME AND ADDRESS (Include ZIP Code,)	
<input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> JOINT VENTURE	<input type="checkbox"/> SUPPLIER/SERVICE		
AMOUNT OF CONTRACT \$		PHONE	
WORK TO BE PERFORMED			
<input type="checkbox"/> DBE		NAME AND ADDRESS (Include ZIP Code)	
<input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> JOINT VENTURE	<input type="checkbox"/> SUPPLIER/SERVICE		
AMOUNT OF CONTRACT \$		PHONE	
WORK TO BE PERFORMED			
<input type="checkbox"/> DBE		NAME AND ADDRESS (Include ZIP Code,)	
<input type="checkbox"/> SUBCONTRACTOR <input type="checkbox"/> JOINT VENTURE	<input type="checkbox"/> SUPPLIER/SERVICE		
AMOUNT OF CONTRACT \$		PHONE	
WORK TO BE PERFORMED			
TOTAL DBE AMOUNT: \$		TOTAL WBE AMOUNT: \$	
SIGNATURE OF PERSON COMPLETING FORM: _____			
TITLE: _____		PHONE: _____	DATE: _____

NOTE: Negative reports are required. Original signature and date are required. Failure to complete and submit this form with the bid will cause the bid to be rejected as non-responsive.

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
GOOD FAITH EFFORT CERTIFICATION BY RECIPIENT**

1. The apparent successful low bidder on Clean Water State Revolving Fund Program funded project number C-06-_____ is _____
(Name of Bidder)

2. Before the State Water Resources Control Board can consider requests for an Approval Of Award (AOA) to any bidder, the applicant/recipient must certify to the following:

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The bidder has obtained _____% of DBE participation for this contract.

Also submitted are the Contractor/Subcontractor Certification and Selected Prime Contractor/Recipient DBE forms that contain a complete list of those DBE firms subcontracted with or with whom other types of agreements were made. The list includes the names of the firm, address, phone number and dollar amount involved.

The following affirmative steps as required by 40 CFR 35.3150 (d) have been taken:

1. The contractor divided total requirements when economically feasible, into small tasks or quantities to permit maximum participation of DBE businesses.
2. The contractor established delivery schedules, where the requirements of the work permitted, which encouraged participation by DBE businesses.
3. The contractor included qualified DBE businesses on solicitation lists.
4. The contractor assures that DBE businesses were solicited, whenever they were potential sources.
5. The contractor used the services and assistance of the Small Business Administration and the Office of Minority Business Development Agency of the U.S. Department of Commerce.

It must be understood that the applicant/recipient in its role as a public trustee assumes primary responsibility to achieve an acceptable level of DBE utilization. This primary responsibility is a basic condition of the award of any Clean Water State Revolving Fund financial agreement. Where an application/recipient fails to meet its obligations under these requirements the applicant/recipient may be declared non-responsive and may have funding either annulled, suspended or terminated.

In accepting these responsibilities, I hereby certify to the above.

Name of Applicant/Recipient

Signature of Authorized Representative

Date

Name and Title of Authorized Representative

NOTE: This form must be submitted with the AOA package.

**STATE WATER RESOURCES CONTROL BOARD - DIVISION OF FINANCIAL ASSISTANCE
DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION
CLEAN WATER STATE REVOLVING FUND FINANCING AGREEMENT
INSTRUCTIONS FOR COMPLETING THE UR 334**

- Box 1** Grant or Financing Agreement Number.
- Box 2** Semi-annual reporting period. Choose one semi-annual period and enter the correct years.
- Box 3** Enter the dates between which you plan to make procurements under this financing agreement or grant.
- Box 4** Enter the total amount of payments paid to the contractor or sub-contractors during this reporting period.
- Box 5** Enter Recipient's Name and Address.
- Box 6** Enter Recipient's Contact Name and Phone Number.
- Box 7** Enter details for the **DBE purchases only** and be sure to limit them to the current period. 1) Use either an "R" or a "C" to represent "Recipient" or "Contractor." 2) Enter a dollar total for DBE and total the two columns at the bottom of the section. 3) Provide the payment date. 4) Enter a product type choice from those at the bottom of the page. 5) List the vendor name and address in the right-hand column
- Box 8** Initial here if no DBE contractors or sub-contractors were paid during this reporting period.
- Box 9** Initial this box only if all purchases under this financing agreement or grant have been completed during this reporting period or a previous period. If you initial this box, we will no longer send you a survey.
- Box 10** This box is for explanatory information or questions.
- Box 11** Provide an authorized representative signature.
- Box 12** Enter the date form completed.