Ohio WPCLF and WSRLA Disadvantaged Business Enterprises (DBE) Utilization

USEPA recently adopted a revised program to encourage the participation of disadvantaged businesses in the construction activities funded by the Clean Water and Drinking Water SRF's. "DBE" is an all inclusive term that includes Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Small Business Enterprises (SBE), Small Business in Rural Areas (SBRA), HUBZone Small Business, Labor Surplus Area Firms (LSAF), and other entities defined as socially and/or economically disadvantaged. While the WPCLF and WSRLA strongly encourage participation by all disadvantaged groups, specific participation goals are negotiated with USEPA only for Minority Business Enterprises and Women's Business Enterprises. The primary revisions incorporated into the new DBE program include new requirements for DBE certification and maintenance of a DBE bidders list and changes to the reporting procedure.

GOALS

As a condition of receiving capitalization grants from U.S. EPA for the Water Pollution Control Loan Fund (WPCLF) and the Water Supply Revolving Loan Account (WSRLA), the Ohio EPA negotiates "fair share" Disadvantaged Business Enterprises (DBE) objectives with U.S. EPA. The current negotiated goals for construction related activities are 3.0% of all contracts to MBE's and 3.7% of all contracts to WBE's.

DBE CERTIFICATION

Under the new DBE program, qualified DBE's are those that have been certified as such. Certifications can be obtained from a federal agency such as the Small Business Administration or the Department of Transportation or by an approved State agency. The Unified Certification Program (UCP) administered by the Ohio Department of Transportation's (ODOT) can provide the necessary DBE certifications. Information on the UCP is at https://www.ohioucp.org/index.vm and the ODOT website http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Pages/DBE.aspx.

Applications for certification by EPA can be found on EPA's Small Business Programs website at www.epa.gov/osbp/granys under Certification Forms. If you have questions regarding EPA's certification process you may contact Kimberly Patrick at 202-566-2605.

DBE QUALIFICATIONS

To qualify for MBE certification, businesses must be 51 percent owned and controlled by a U.S. citizen and Ohio resident belonging to an African-American, Native American, Hispanic, or Oriental ethnic group. In addition, the business must be in operation for at least one year prior to submitting an application. For DBE status, a business must be at least 51 percent owned by a socially and economically disadvantaged person who participates in the daily operations of the business. This person must be a woman or of African-American, Hispanic, Native American, Asian-Pacific or Asian Subcontinent ethnicity.

GOOD FAITH EFFORTS

Borrowers and their prime contractors must follow, document, and maintain documentation of their good faith efforts as listed below to ensure that Disadvantaged Business Enterprises (DBEs) have the opportunity to participate in the project by increasing DBE awareness of procurement efforts and outreach.

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; including DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. 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. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could be subcontracted with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in numbers 1 through 5 above.

Required Contract Conditions

These conditions must be included in all procurement contracts entered into by the Borrower for all WPCLF and WSRLA projects:

1. The prime contractor must pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the owner.
2. The prime contractor must notify the owner in writing prior to the termination of any Disadvantage Business Enterprise subcontractor for convenience by the prime contractor.
3. If a Disadvantage Business Enterprise contractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six good faith efforts if soliciting a replacement contractor.
4. The prime contractor must employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.
5. An owner must ensure that each procurement contract it awards contains the following terms and conditions:

   The contractor shall not discriminate on the basis of race, color, national origin or sex in the 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 breech of this contract which may result in the termination of this contract or other legally available remedies.

The following forms must also be included in the bid package. These USEPA reporting forms are attached.

1. The prime contractor must provide **EPA Form 6100-2 DBE Program Subcontractor Participation Form** to all of its Disadvantaged Business Enterprise subcontractors. This form gives the DBE subcontractor the opportunity to describe the work the DBE received from the Prime Contractor, how much the DBE was paid and any other concerns the DBE might have. Disadvantaged Business Enterprise subcontractors may send completed Form 6100-2 directly to the Region 5 DBE Coordinator listed below.

Adrianne M. Callahan, Region 5 MBE/WBE Coordinator
USEPA, Acquisition and Assistance Branch
77 West Jackson Boulevard (MC-10J)
Chicago, IL 60604

2. The prime contractor must have its Disadvantaged Business Enterprise subcontractors complete **EPA Form 6100-3 – DBE Program Subcontractor Performance Form**. This form gives the DBE subcontractor the opportunity to report the scope and cost of the subcontract it and should be forwarded to the Prime Contractor along with the DBE's quote. The prime contractor must include all completed forms as part of the prime contractor's bid or proposal package to the Borrower.
3. The prime contractor must complete and submit **EPA 6100-4 DBE Program Subcontractor Utilization Form** as part of the prime contractor's bid proposal package to the Borrower. This form indentifies the Prime Contractor's intended use of an identified DBE and the estimated dollar amount of the subcontract. The Prime Contractor must provide this form to the Borrower. The Borrower must submit this form to the Ohio EPA/DEFA as part of the bid package upon which the WPCLF/WSRLA loan amount is determined.

BIDDERS LIST

The Borrower must create, maintain, and use a bidders list for purposes of soliciting both MBE/WBEs and non-MBE/WBEs during procurement of construction, equipment, supplies, and services. This list shall include:

1. Entity's name with point of contact;
2. Entity's mailing address, telephone number, and e-mail address;
3. The procurement on which the entity bid or quoted, and when; and
4. Entity's status as an MBE/WBE or non-MBE/WBE.

Bidders List exemptions are recognized for loan amounts of $250,000 or less in any one fiscal year.

The Bidders List shall be maintained until the project period has expired and the Borrower is no longer receiving EPA funding. The Bidders List must include all firms that bid on the prime contracts, or bid or gave a quote on subcontracts, including both MBE/WBEs and non-MBE/WBEs.

If you have any questions please contact your DEFA Project Coordinator at (614) 644-2798.

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Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Performance Form

NAME OF SUBCONTRACTOR[1]	PROJECT NAME
ADDRESS	BID/PROPOSAL NO.
TELEPHONE NO.	E-MAIL ADDRESS
PRIME CONTRACTOR NAME	

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME	PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR

Currently certified as an MBE or WBE under EPA's DBE Program? _____ Yes _____ No Signature of Prime Contractor Date Print Name Title _____

_____ Signature of Subcontractor Date

_____ _____ Print Name Title

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

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Environmental Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Participation Form

NAME OF SUBCONTRACTOR[1]	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	EMAIL ADDRESS
PRIME CONTRACTOR NAME	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

Subcontractor Signature

Title/Date

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

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Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form

BID/PROPOSAL NO.	PROJECT NAME
NAME OF PRIME BIDDER/PROPOSER	E-MAIL ADDRESS
ADDRESS	
TELEPHONE NO.	FAX NO.

The following subcontractors[1] will be used on this project:

COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATED DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?

I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

Signature of Prime Contractor _____ Date _____

Print Name _____ Title _____

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.