



**Clean Water Fund Memorandum
June 24, 2014**

TO: All Connecticut Municipalities and Engineering Consultants

FROM: Denise Ruzicka, Director of Planning & Standards, Bureau of Water Protection & Land Reuse

RE: Disadvantaged Business Enterprise (DBE) Subcontractor Participation on Clean Water Fund (CWF) Construction Projects

I. PURPOSE

The municipality, through its Prime Contractor must make specified good faith efforts to attain the DBE goals as specified in this document in Section III. This is an administrative condition of the U.S. Environmental Protection Agency (EPA) Grant which funds Clean Water Fund Projects.

II. GOVERNING STATUTE OR REGULATION

General Compliance (Federal), 40 CFR, Part 33: The municipality, through its Prime Contractor must comply with the requirements of EPA's Program for Utilization of Small, Minority, and Women's Business Enterprises (MBE/WBE).

III. EPA REQUIREMENTS

The following clause shall be included in all construction contract documents for goods and services to be funded under the CWF:

The requirement for DBE subcontractor participation, expressed as a percentage of the total eligible contract amount, shall be a minimum of 8.0 percent with the following makeup:

MBE 3.0 percent WBE 5.0 percent

Failure to meet or exceed the required percentage or submit acceptable documentation of the six good faith efforts may render a bid non-responsive and may cause the bid to be rejected.

IV. A DBE must be certified at the time that the subcontract for their services is executed. A business that is pending new certification, recertification, or whose certification has expired cannot be counted toward the goals. This is also the case if the business is pending recertification of its expired status as a DBE.

V. THE SIX GOOD FAITH EFFORTS AS SPECIFICALLY DEFINED BY EPA

The Six Good Faith Efforts are required methods employed by all DEEP Clean Water Fund recipients to ensure that all DBEs have the opportunity to compete for procurements funded by DEEP financial assistance dollars.

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing 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 solicitations 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 subcontract with DBEs. For Indian 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.
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 SBA and the Minority Business Development Agency of the Department of Commerce.
6. If the Prime Contractor awards subcontracts, require the Prime Contractor to take the above steps.

The Prime Contractor's certification as a DBE has no effect on this requirement. Therefore, if the Prime Contractor is a DBE, the Six Good Faith Efforts defined above must be employed in the procurement of subcontracts to be secured to achieve the MBE 3.0% and WBE 5.0% participation. Also, for subcontracts for material suppliers, only 25% of the dollar value of their contracts may be applied toward the required percentage listed above unless that supplier manufactures those supplies and/or adds specialized input to the process.

VI. ACCEPTABLE CERTIFICATION OPTIONS

1. **Connecticut Department of Administrative Services (DAS)** - DEEP will continue to accept DAS certification until such time as other State entities are identified whose certification processes meet the EPA criteria. DAS will only certify Connecticut based firms that meet the criteria under CGS 4a-60g. It is sometimes considered an acceptable practice to count a WBE as a MBE; however, it is at the DEEP Municipal Facilities Unit's discretion in cooperation with the DEEP Clean Water Fund Administration Unit as to whether or not this will be permitted. Requests concerning all such cases must be requested in writing through the DEEP Municipal Facilities Engineer assigned to the project for a determination.
2. **Connecticut Department of Transportation (ConnDOT)** - Companies that desire to do business with ConnDOT as well as the DEEP should seek ConnDOT certification which will be accepted by the DEEP. DBE firms are advised that the certification process can take 90 days to complete. ConnDOT will certify both in state as well as out of state firms.
3. **The Environmental Protection Agency (EPA)** – In the event an entity cannot be certified by ConnDOT as a DBE, that entity should seek certification with EPA. Such entities must provide EPA with evidence from ConnDOT denying certification.

4. **Small Business Administration (SBA-Federal)**-SBA certification is available to companies under the Woman Owned Small Business (WOSB) program and the SBA 8(a) Business Development Program (www.sba.gov/8abd/) which has a net worth ceiling of \$250,000 for initial applicants.
5. **Other states certification**- Prime Contractors and Engineering Consultants may utilize certification from other states. Such certification must specify the DBE designation. Where there is no DBE certification option within a state, the instance must be presented to the DEEP Financial Administrator assigned to the project for consideration on a per case basis.

VII. DBE COMPLIANCE PROCESS

Within fourteen (14) calendar days after bid opening the apparent low bidder shall complete and submit to the municipality the Subcontractor Verification Form provided in the contract documents along with corresponding DBE certification for each subcontractor. The municipality must then submit copies as part of the bid application to DEEP as demonstration of compliance with this memorandum. **Failure to submit these documents by the close of business of the fourteenth calendar day after bid opening may result in the bid being deemed non-responsive and may cause the bid to be rejected.** Two executed copies of the DBE subcontracts must be submitted to the municipality, who must then submit one copy to the DEEP Financial Administrator as demonstration of compliance with this memorandum.

No payment requests will be processed by DEEP until the executed copies of the subcontracts are on file in the DEEP office.

It is understood that the Prime Contractor must make and document the good faith efforts as defined above. Should the contractor not meet the goals, documentation of good faith efforts will be required to be submitted to the DEEP Municipal Facilities Engineer for consideration that the good faith effort was extensive enough to warrant the acceptance of a lower goal for the specific contract in question.

VIII. ADDITIONAL EPA CONTRACT ADMINISTRATION REQUIREMENTS (Please note the items e, f, and g below only apply to the apparent low bidder prior to DEEP's letter authorizing award of the construction contract.)

Applicable Federal compliance requirements are excerpted below from 40 CRF Part 33, Section 33.302.

a) 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.

b) 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.

c) 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 good faith efforts if soliciting a replacement contractor.

d) A recipient must require its prime contractor to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives (as outlined in Section III).

e) A recipient must require its prime contractor to provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. EPA Form 6100-2 gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have, for example reasons why the DBE subcontractor believes it was terminated by the prime contractor. DBE subcontractors may send completed copies of EPA Form 6100-2 directly to the appropriate EPA DBE Coordinator (Larry Wells, U.S. EPA, Federal McCormack Building, 5 Post Office Square, Boston, MA 02109).

f) A recipient must require its prime contractor to have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form. A recipient must then require its prime

contractor to include all completed forms as part of the prime contractor's bid or proposal package (This is the bid application package submitted to DEEP as specified in the Approval of Plans and Specifications).

g) A recipient must require its prime contractor to complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package.

h) Copies of EPA Form 6100-2—DBE Program Subcontractor Participation Form, EPA Form 6100-3—DBE Program Subcontractor Performance Form and EPA Form 6100-4—DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet http://www.epa.gov/osbp/dbe_contract_admin.htm or directly from EPA OSDBU.

i) This term and condition shall be included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

The completion and submission of the 6100 forms defined above does not constitute a contractual agreement between the general contractor and the named subcontractor. Should another subcontractor be substituted in place of any of the firms named in the 6100 forms defined above, both the municipality and the DEEP (Clean Water Fund Unit, 79 Elm Street, Hartford 06106-5127) should be notified in writing within three (3) business days of the change. The prime contractor is required to employ the six good faith efforts in that the DBE percentages shall be maintained or exceeded in the event of one subcontractor being substituted for another.

I hereby verify that I have read and understand the DBE requirements in this memorandum and will procure subcontracts whose percentages will meet or exceed the minimums listed above.

Contract Name _____

Prime Contractor Company Name _____

Prime Contractor Authorized Signature _____ Date _____

IX. DEFINITIONS

CGS: Connecticut General Statutes

ConnDOT: Connecticut Department of Transportation

CWF: Clean Water Fund

DAS: Connecticut Department of Administrative Services

DBE: Disadvantaged Business Enterprise

DEEP: Department of Energy and Environmental Protection

EPA: Environmental Protection Agency (Federal)

MBE: Minority Business Enterprise

SBA: Small Business Administration (Federal)

WBE: Woman Business Enterprise

WOSB: Woman Owned Small Business (Federal program - SBA)