

Clean Water Fund Memorandum (2019-003)

Disadvantaged Business Enterprise (DBE) Subcontractor Participation on Clean Water Fund (CWF) Projects for 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 CWF projects.

This memorandum supersedes the **Clean Water Fund Memorandum (2016-003)**

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 DBEs.

III. EPA REQUIREMENTS

The following clause shall be included in all construction contract documents and amendments 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:

Minority Business Enterprise (MBE): 3.0 percent
Woman Business Enterprise (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. THE SIX GOOD FAITH EFFORTS AS SPECIFICALLY DEFINED BY EPA

The Six Good Faith Efforts are required methods employed by all Connecticut Department of Energy and Environmental Protection (DEEP) CWF recipients to ensure that all DBEs have the opportunity to compete for procurements funded by DEEP financial assistance dollars. The prime contractor is expected to employ the six good faith efforts throughout the entire project to insure that the DBE percentages are maintained or exceeded in the event that one DBE subcontractor needs to be substituted for another.

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 Small Business Administration (SBA) (Federal) 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.

V. CERTIFICATION

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.

In the case where a subcontractor DBE is certified as both a MBE and a WBE (a woman who is also a member of a minority class):

1. The prime contractor may count the entire value of the subcontract as either a MBE or a WBE.
2. The prime contractor may choose to split the subcontract between the MBE and the WBE categories to fulfill both goals. If the prime contractor chooses this route:
 - a. They must indicate the dollars to be apportioned to the categories either on the face of the copy of the fully executed subcontract submitted to the Connecticut Department of Energy and Environmental Protection (DEEP) or by some other written method.
 - b. The certification submitted to DEEP must indicate that the principal of the subcontractor is both a woman and a minority.
 - c. For a certification that only identifies the subcontractor as a DBE, additional documentation is required as proof of dual status. In the case of Connecticut Department of Transportation (CTDOT), the detailed information page within their online database suffices as proof.

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 Connecticut General Statute 4a-60g.
2. **CTDOT** - Companies that desire to do business with CTDOT as well as the DEEP should seek CTDOT certification which will be accepted by the DEEP. DBE firms are advised that the certification process can take 90 days to complete. CTDOT will certify both in state as well as out of state firms.

3. **EPA** - In the event an entity cannot be certified by CTDOT as a DBE, that entity should seek certification with EPA. Such entities must provide EPA with evidence from CTDOT denying certification.
4. **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 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

1. Within fourteen (14) calendar days after bid opening the prime contractor (apparent low bidder) shall complete and submit two copies of the DEEP Subcontractor Verification Form along with the DBE certification for each subcontractor to the municipality. The municipality must then submit one copy of these documents to DEEP as part of the authorization to award request.
2. Once DEEP authorizes the municipality to award the contract, the prime contractor is required to submit two copies of the executed DBE subcontracts to the municipality who submits one copy to the DEEP Financial Administrator.
3. No payment requests will be processed by DEEP until the executed copies of the subcontracts and the DBE certifications are on file in the DEEP office.
4. Should the prime contractor not meet the goals, documentation of good faith efforts will be required to be submitted to the DEEP Municipal Facilities Wastewater 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.
5. In the event that a DBE subcontractor is substituted for another during the project, two copies of the executed subcontract along with the corresponding DBE certification for the substitute are submitted to the municipality who forwards one copy of each to the DEEP Financial Administrator.
6. If additional construction costs are approved by DEEP, the prime contractor employs the good faith efforts defined above to meet the goals for the new total eligible contract amount.

VIII. DAS PREQUALIFICATION CERTIFICATION FOR DBE SUBCONTRACTORS

At time that the prime contractor submits copies of the executed DBE subcontracts to the municipality, two copies of the current DAS Prequalification Certificate for each DBE subcontractor whose subcontract value is equal to or greater than \$500,000 must also be submitted. In turn, the municipality is required to submit one copy of each DBE Prequalification Certification to the DEEP Financial Administrator. Suppliers of material or products who do not do installation or construction work are not subject to the DAS Construction Contractor prequalification requirement.

IX. SUBMISSION OF THIS FORM

This form is to be signed by the contractor or the contractor's authorized representative. The form is then submitted to the municipality's representative for signature. The municipality includes the form as part of the authorization to award request to DEEP.

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 _____

Name of Prime Contractor _____

Name and Title of Authorized Officer _____

Authorized Signature _____ Date _____

Town Official and Title _____

Authorized Signature _____ Date _____

X. DEFINITIONS

CGS: Connecticut General Statutes

CTDOT: Connecticut Department of Transportation

CWF: Clean Water Fund

DAS: Connecticut Department of Administrative Services

DBE: Disadvantaged Business Enterprise

DEEP: Connecticut 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)

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Date


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