



**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) Projects for Engineering Services

I. PURPOSE

The municipality, through its Engineering Consultant 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 Engineering Consultant 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 Engineering Services contracts and contract amendments 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

This requirement shall apply to all Engineering Services contracts that originate with a value over \$100,000. Within any phase of a project where the total of the original contract price plus all contract amendments is less than \$100,000, then no MBE/WBE participation will be required.

IV. A DBE must be certified at the time that the subcontract for their services is executed. A business that is pending certification 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 engineering consultant awards subcontracts, require the prime engineering consultant to take the above steps.

The prime engineering consultant's certification as a DBE has no effect on this requirement. Therefore, if the prime engineering consultant 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.

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 prime 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

The Engineering Consultant must submit DBE certification for each subcontractor. 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 Engineering Consultant must make and document the good faith efforts as defined above. Should the Consultant 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

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

- a) A recipient must require its prime engineering consultant to pay its subcontractor for satisfactory performance no more than 30 days from the prime engineering consultant's receipt of payment from the recipient.*
- b) A recipient must be notified in writing by its prime engineering consultant prior to any termination of a DBE subcontractor for convenience by the prime engineering consultant.*
- c) If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime engineering consultant to employ the six good faith efforts if soliciting a replacement contractor.*
- d) A recipient must require its prime engineering consultant to employ the six good faith efforts even if the prime engineering consultant has achieved its fair share objectives (as outlined in Section III).*
- e) A recipient must require its prime engineering consultant 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 engineering consultant, 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 engineering consultant. 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 engineering consultant to have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form. A recipient must then require its prime engineering consultant to include all completed forms as part of the prime engineering consultant's bid or proposal package.*
- g) A recipient must require its prime engineering consultant 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.

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 Engineering Firm _____

Name and Title of Authorized Officer _____

Authorized Signature _____ Date _____

Town Official and Title _____

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)