

Form 6-F

Requirements for Disadvantaged Business Enterprise Utilization and Equal Employment Opportunity

I. GENERAL

A. POLICY

Consistent with the President's Policy Statement on Minority Business Enterprise dated December 17, 1983 (Executive Order 12432) and 40 CFR §§ 30, 31, 33, 35, and 40, all successful bidders shall be required to comply fully with these bid specifications toward the goal of equitable utilization of Disadvantaged Business Enterprises (DBEs), which include Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), Small Businesses in Rural Areas (SBRAs), and other entities meeting the U.S. Environmental Protection Agency's (EPA's) DBE rule criteria.

Such utilization may be through prime contracting, subcontracting, joint-venture, procurement of supplies, material or equipment, or other business participation utilized in completing the project. In this regard all contractors shall take all necessary and reasonable steps to ensure DBEs have the maximum opportunity to compete for and/or perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of projects where assistance is provided from the State of Idaho, Department of Environmental Quality's State Revolving Fund (SRF).

B. REQUIREMENTS

Successful bidders must make the following affirmative steps in awarding subcontracts for supplies, construction, or services:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. 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. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process;
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. 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 Idaho Transportation Department, Idaho Department of Environmental Quality's Fiscal Office, the Small Business Administration, and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate.

II. REQUIRED SUBMITTALS

Note: All forms listed in this section shall be submitted by the successful bidder prior to the notice to proceed, with the exception of:

- **Form 6-O, submitted semiannually by the loan recipient to the DEQ State Office, Fiscal Section—Grants Administration**
- A. Small, Minority, and Women Business Enterprises to be Utilized (Form 6-G). If no firms are listed on Form 6-G, documentation of the efforts to solicit such firms must be provided.
 - B. Sworn Statement of Compliance with Disadvantaged Business Enterprise (DBE) Utilization Requirements (Form 6-H).
 - C. Certification of Non-segregated Facilities Statement (Form 6-J).
 - D. DBE Program Subcontractor Performance Form (EPA Form 6100-3) (DEQ Form 6-U)
 - E. DBE Program Subcontractor Utilization Form (EPA Form 6100-4) (DEQ Form 6-V)
 - F. Notice to labor unions or other organization of worker's non-discrimination in employment (Form 6-K).
 - G. Contractor's Compliance Statement (Form 6-I).
 - H. Include an Equal Employment Opportunity (EEO) clause, or section, in the construction contract and subcontracts (Form 6-L).
 - I. Submit to DEQ Standard Form 100 (EEO-1) (Form 6-M) within 30 days of contract award (to the EEO Joint Reporting Committee, P.O. Box 19100, Washington, D.C., 20036-9100), unless such a report has been filed within 12 months preceding the contract award date. The EEO-1 report (Form 6-M) is to be submitted annually during the life of the project. Maintain copies of submissions in loan applicant files.
 - J. State clearly and expressly in solicitations for employees that all qualified applicants receive consideration for employment without regard to race, color, sex, age, or physical handicap.
 - K. Post EEO notices for the jobs in conspicuous places. They must be available to employees, applicants for employment, and representatives of labor unions or other such worker's organizations. EEO posters are available from the Department of Labor.
 - L. Executive Order 11246 must be complied with in the hiring of minorities and women on the construction project.

The goals for MBE, WBE, and SBRA participation are established each year and incorporated into the grant agreement between EPA and DEQ.

Fair share is a reasonable amount of funds commensurate with the total project funding, demographic factors and the availability of small, minority and women's businesses. A

fair share does not constitute an absolute goal, but a commitment on the part of the bidder to attempt to use small, minority, and women's businesses by carrying out the five affirmative steps described under Section I, B of this document.

Submit semiannual reports of MBE/WBE utilization to DEQ using Form 6-O.

- M. Submit MBE/WBE/SBRA subcontracts and supply contracts within 15 days of execution.

By submission of its bid, all bidders acknowledge that they understand and agree to be bound by the equal opportunity requirements of Executive Order 11246, U.S. Department of Labor (OFCCP) Regulations, Part 41 CFR 60-4 and 41 CFR 60-4.3(a); Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency Financial Assistance Agreements, Part 40 CFR 30, 31, 33, 35, and 40; and DEQ Small, Minority and Women Business Utilization goals, all of which shall be applicable throughout the duration of this project. Each bidder agrees that, if awarded this contract, the bidder will similarly bind contractually each subcontractor by the inclusion in the subcontract of all subcontractors the foregoing policies and regulations.

- N. Ensure that DBE subcontractors submit the DBE Program Subcontractor Participation Form (EPA Form 6100-2) (DEQ Form 6-T) to DEQ, Loans and Grants Program, Attn: DBE Coordinator, 1410 N. Hilton, Boise, Idaho, 83706. Retain copies of submissions in project files.

Explanatory note for DBE compliance reporting:

EPA's DBE Rule and How it Affects Companies Bidding on SRF Financed Projects

The Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) rule became effective on May 27, 2008. The DBE rule sets forth an EPA program that serves the compelling government interest of remedying past and current racial discrimination through agency-wide procurement objectives. The new DBE rule revises and replaces EPA's Minority and Women Business Enterprise (MBE/WBE) Program. Because the State Revolving Fund (SRF) Loan Program funding is provided by EPA, the new DBE rule requirements apply to all SRF funded projects.

The implementation of the new DBE Rule (40 CFR Parts 30, 31, 33, 35, and 40) adds additional contract administration requirements to an SRF loan recipient. This document summarizes those requirements.

Note that the SRF loan recipient is not a passive conduit of the contractor's DBE information. By submitting the proposed contractor's DBE documentation to the SRF Loan Program for review, the loan recipient is asserting that it has found the proposed contractor's documentation of good faith efforts adequate.

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1. Each procurement contract signed by an SRF loan participant must include the following term and condition:

“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 breach of this contract which may result in the termination of this contract.”

2. All SRF loan recipients will be required by EPA to create and maintain a “Bidders List”.
 - a. This list must include all firms that bid on prime contracts, or bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs.
 - b. This list must be kept until the project period for the identified loan has ended. The project period is defined as the timeframe that the loan participant receives SRF funding.
 - c. The following information must be obtained from all prime and subcontractors:
 - (1) Entity’s name with point of contact.
 - (2) Entity’s mailing address, telephone number, and email 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
 - d. The SRF loan recipient must send a copy of the Bidder’s List to SRF.
3. Following are the related contract administration provisions:
 - a. A loan 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 loan recipient.
 - b. A loan 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 loan recipient must require the prime contractor to employ the Six Good Faith Efforts (described below) if soliciting a replacement subcontractor.
 - d. A loan recipient must require its prime contractor to employ the Six Good Faith Efforts even if the prime contractor has achieved its fair share objectives.

Six Good Faith Efforts

- i. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; including placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- ii. 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.
- iii. Consider in the contracting process whether firms competing for large contracts could be contracted with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- iv. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- v. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U. S. Department of Commerce.
- vi. If the prime contractor awards subcontracts, require the prime contractor to take the steps in numbers 1 through 5 above.