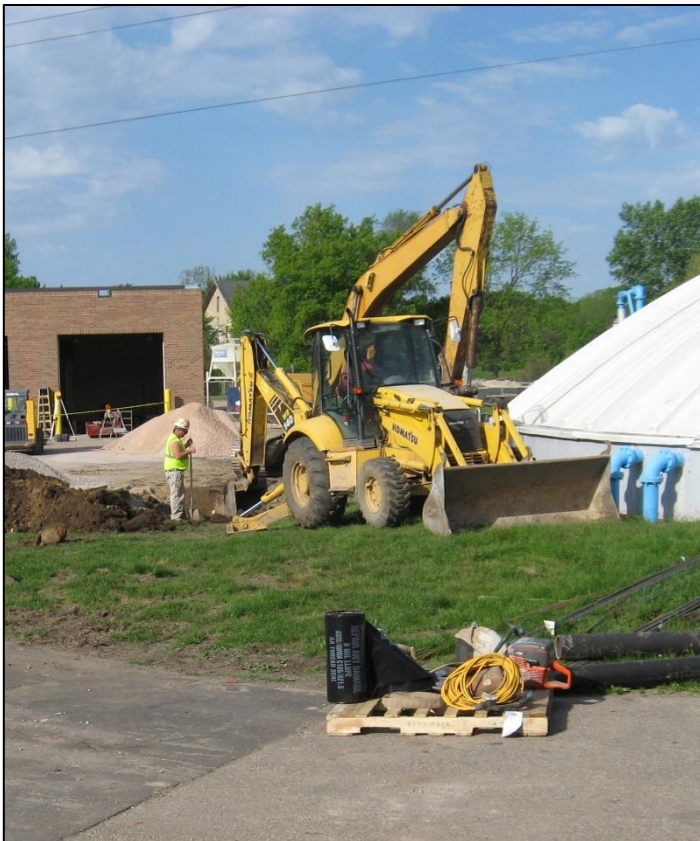


Contract Packet for Disadvantaged Business Enterprise Compliance

This packet contains important information and required forms for compliance with the U.S. Environmental Protection Agency's Disadvantaged Business Enterprise (DBE) requirements, which are contained in [40 CFR Part 33](#), and ss. [NR 162.09\(4\)](#) and [NR 166.12\(4\)](#), Wis. Adm. Code. Information is also available on the Environmental Loans website at dnr.wi.gov/aid/documents/EIF/guide/DBE.html.



Acronyms

CWFP: Clean Water Fund Program

DBE: Disadvantaged Business Enterprise

EPA: Environmental Protection Agency

MBE: Minority Business Enterprise

SDWLP: Safe Drinking Water Loan Program

WBE: Women Business Enterprise

WHICH DBE REQUIREMENTS APPLY TO YOUR PROJECT?

Throughout this Packet:

- items in red text apply to ALL municipalities and projects
- items in blue text apply to each project designated as Federal Equivalency*

Specific DBE Requirement	CWFP and SDWLP Non-Federal Equivalency Projects	CWFP and SDWLP Federal Equivalency w/ Project Cost @ <i>or Below</i> \$250,000	CWFP and SDWLP Federal Equivalency w/ Project Cost <i>Over</i> \$250,000
Solicit for DBEs	X	X	X
Submit Good Faith Certification Form	X	X	X
Establish and Keep a Bidders List			X
Include Extra Conditions in Contracts		X	X
Meet Contract Administration Requirements		X	X

*The department must designate some projects as Federal Equivalency projects each year, see dnr.wi.gov/aid/federalEquivalency. Any recipient whose project is Federal Equivalency must meet ALL of the requirements summarized in the table above.

THE SIX GOOD FAITH EFFORTS

All CWF and SDWLP financial assistance recipients must comply with the Six Good Faith Effort requirements.

What is the purpose of the Six Good Faith Efforts?

The Six Good Faith Efforts are required for financial assistance agreement recipients to ensure that all DBEs have the opportunity to compete for procurements funded by EPA financial assistance, and to ensure nondiscrimination in the award of contracts resulting from those procurements.

What are the Six Good Faith Efforts?

In order to demonstrate a good faith effort, the recipient must, at a minimum, fulfill the following six affirmative steps:

1. Include qualified DBEs on solicitation lists.
2. Assure that potential DBEs are solicited whenever they are potential sources.
3. Divide scope of work (total requirements), when economically feasible, into smaller tasks or quantities to permit maximum participation of DBEs.
4. Establish delivery schedules (for projects where the requirements of the work allow) that will encourage participation by DBEs.
5. Use the services and assistance of the following, as appropriate:
 - [Small Business Administration](#)
 - [Minority Business Development Agency](#)
 - [U.S. Department of Commerce](#)
 - See list of Unified Certification Programs (UCPs) in Wisconsin and bordering states that certify DBEs and provide similar services and assistance at dnr.wi.gov/aid/documents/EIF/guide/MBElist.html
6. If the prime contractor awards contracts/procurements, require the prime contractor to take the affirmative steps 1-5 above.

How can recipients comply with the DBE solicitation requirements of ss. [NR 162.09\(4\)](#) and [NR 166.12\(4\)](#), Wis. Adm. Code?

All municipalities and prime contractors must make good faith efforts to solicit DBEs whenever required to bid construction work, equipment, raw materials, or supplies for a project according to state procurement laws. DBEs include, but are not limited to, MBEs and WBEs.

Municipalities and prime contractors when applicable, must do **at least one** of 1., 2., or 3.:

1. **Include language in bid advertisements** that encourages DBEs to submit bid proposals. If contracts are advertised separately, each advertisement should include the DBE language.
 - **MUNICIPALITIES:** To make a good faith effort when hiring prime contractors, the municipality should add a statement to its advertisements for prime contractors such as "We encourage DBEs, including MBEs and WBEs, to submit bid proposals." The advertisements must appear at least in the official newspaper of public record for the municipality. **The municipality must then submit a copy of the advertisement and an affidavit of publishing to the DNR along with other bid documents.**

- **PRIME CONTRACTORS:** To make a good faith effort when subcontracting, a contractor can advertise for subcontractors with an ad that includes a statement like "DBEs, including MBEs and WBEs, are encouraged to submit proposals." If just one advertisement is published for all areas of work that may be subcontracted, it should indicate those types of work that could be subcontracted. The advertisement(s) must appear in an industry trade publication and/or the official newspaper of public record for the municipality. **The prime contractor should supply a copy of the advertisement to the consulting engineer or the municipality so they can submit it to the DNR along with other bid documents.**
2. **Contact DBEs on a Unified Certification Program (UCP) List** to solicit bids from these firms (e.g., firms registered in the WisDOT UCP, wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx). Individuals that make the contacts should document all the contacts, preferably using [Form 8700-294a](#), the DBE Contacts Worksheet.

The UCP lists are the main sources of certified DBEs for the CWF and SDWLP (see dnr.wi.gov/aid/documents/EIF/guide/MBElist.html), but there are other sources available. Any certification must meet the same requirements as those used for UCP-listed businesses.
 3. **Utilize DBEs registered with the UCP** (e.g., WisDOT UCP, wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx). If DBEs are utilized, municipalities must report the expected utilization on [Form 8700-294](#) or [Form 8700-294a](#) depending on the solicitation method. **Municipalities must then submit those forms to DNR along with other bidding documents prior to loan closing.** When closing out the loan, municipalities will also have to report on the actual details of DBE utilization, so please maintain proper documentation.

When Solicitation Requirements Are Not Met

If none of the above options are used by the municipality and the construction contractor(s) to meet DBE solicitation requirements for a project, **8% of the construction** costs in the project budget will be ineligible for SDWLP funding or eligible only for the market interest rate in the CWF.

MUNICIPALITIES: If a contractor follows at least one of the options to meet DBE solicitation requirements for a project contract, but the municipality uses none of the options to meet DBE solicitation requirements for a project contract, **1% of the construction costs** in the project budget for that contract will be ineligible for SDWLP funding or eligible only for the market interest rate in the CWF.

PRIME CONTRACTORS: If a municipality uses at least one of the options to meet DBE solicitation requirements for a project contract, but the prime contractor uses none of the options to meet DBE solicitation requirements, **7% of the costs** of that specific construction contract that would have been eligible for subsidy will instead be ineligible for SDWLP funding or eligible only for market interest rate in the CWF.

FEDERAL EQUIVALENCY VS. NON-FEDERAL EQUIVALENCY PROJECT REQUIREMENTS

As noted above, **all municipalities** must comply with the **Six Good Faith Efforts and other steps** identified **in Form 8700-294**. These are the only DBE requirements for projects that are non-Federal Equivalency.

Projects designated as Federal Equivalency must comply with the above requirements AND all of the requirements described in the remaining pages of this Contract Packet.

CONTRACT ADMINISTRATION REQUIREMENTS

What are the Contract Administration requirements?

A number of provisions are designed to prevent unfair practices that adversely affect DBEs. Those provisions are as follows:

- 1)** A loan recipient must require its prime contractor to pay its subcontractor for satisfactory performance no later than 30 days from the prime contractor's receipt of payment from the loan recipient.
- 2)** 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.
- 3)** 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 if soliciting a replacement subcontractor.
- 4)** 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.

What is the Bidders List requirement?

- According to the US EPA: "The purpose of the bidders list is to provide the recipient [DNR] and entities receiving identified loans who conduct competitive bidding [municipalities] with a more accurate database of the universe of MBE/WBE and non-MBE/WBE prime contractors and subcontractors. The bidders list is intended to be a list of all firms that are participating, or attempting to participate, on EPA assisted contracts."
- "The list must include all firms that bid or quote on prime contracts or bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs."
- The bidders list must be kept until construction and the project closeout process are complete.

What information must be retained on the Bidders List?

- 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.

What is the exemption from the Bidders List requirement?

- A municipality receiving funds in the amount of \$250,000 or less in any single financial assistance agreement, or in more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the requirement to create and maintain a bidders list.
- This exemption is limited to the bidders list requirements only.

REQUIRED CONTRACT CONDITIONS

Include the following language in all construction contracts associated with a Federal Equivalency project.

This project is being financed in whole or in part by the Wisconsin Department of Natural Resources through the Clean Water Fund Program (CWFP) or the Safe Drinking Water Loan Program (SDWLP). Municipalities constructing projects designated as Federal Equivalency must comply with the following federal laws and all applicable state and federal laws, rules, and regulations and must ensure that their contractor(s) also comply with these laws, rules, and regulations.

- 1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), the Rehabilitation Act of 1973 (P.L. 93-1123, 87 Stat. 355, 29 U.S.C. Sec. 794), the Older Americans Amendments of 1975 (P.L. 94-135 Sec. 303, 89 Stat. 713, 728, 42 U.S.C. Sec. 6102), and subsequent regulations ensure access to facilities or programs regardless of race, color, national origin, sex, age, or handicap.
- 2) Executive Order 11246, as amended by Executive Orders 11375 and 12086 and subsequent regulations, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Inclusion of the seven clauses in Section 202 of E.O. 11246 as amended by E.O. 11375 and 12086 are required in all project related contracts and subcontracts for municipalities over 3,300 population.
- 3) Executive Orders 11625, 12138, and 12432; 40 CFR part 33; Section 129 of P.L. 100-590 Small Businesses Reauthorization & Amendment Act of 1988; Public Law 102-389 (42 USC. 437d); a 1993 appropriations act ("EPA's 8% statute"); and Public Law 101-549, Title X of the Clean Air Acts Amendments of 1990 (42 USC. 7601 note) ("EPA's 10% statute") encourage recipients to award construction, supply, and professional service contracts to minority and women's business enterprises (MBE/WBE) and small businesses and require recipients to utilize affirmative steps in procurement.
- 4) 40 CFR Part 33 - Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements sets forth a narrowly tailored EPA program to serve the compelling government interest of remedying past and current racial discrimination through agency-wide DBE procurement objectives.
- 5) Executive Order 12549, 3 CFR, 189; and 40 CFR Part 32, Subparts B and C, prohibit entering into contracts or subcontracts with individuals or businesses who are debarred or suspended. Borrowers are required to check the status of all contractors (construction and professional services) and must require contractors to check the status of subcontractors for contracts expected to be equal to or over \$25,000 at [SAM.gov/content/exclusions](https://sam.gov/content/exclusions).
- 6) Executive Order 13202, as amended by Executive Order 13208, does not allow bid specifications, project agreements, or other controlling agreements to require or prohibit bidders, contractors, or subcontractors to enter into or to adhere to project labor agreements.
- 7) Section 513 of the Federal Water Pollution Control Act (33 USC 1372) or Section 1450(e) of the Safe Drinking Water Act (42 USC 300j-9(e)), as applicable, requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 USC. App.) and section 3145 of title 40, United State Code. **Please note this provision (Davis-Bacon) applies to ALL loan recipients.**

FORMS

Use the following forms to document good faith efforts and DBE utilization. You can obtain all DBE-related forms from our website at dnr.wi.gov/aid/documents/EIF/forms/forms.html, or by contacting Casey Sweeney at (608) 852-1576 or Casey.Sweeney@Wisconsin.gov.

1. **[8700-294](#) – DBE Good Faith Certification Form.** This mandatory form asks the municipality to certify that required steps were taken to utilize DBEs, including MBEs and WBEs, in its EIF project. The municipality must answer several questions and provide explanations or justification for any “no” answers as to why specific steps were not taken.
2. **[8700-294a](#) – DBE Contacts Worksheet.** It is not mandatory to submit this form when following Option 2 to solicit DBEs, but we encourage municipalities and contractors to use Form 8700-294a. This form provides an easy format for documenting contacts and provides DNR with all the information needed to conduct a review of DBE good faith efforts.

ADDITIONAL INFORMATION

For additional information regarding DBE procurement requirements, contact the DNR project manager assigned to your project or contact Casey Sweeney at (608) 852-1576 or Casey.Sweeney@Wisconsin.gov. Information is also available on the Environmental Loans website at dnr.wi.gov/aid/documents/EIF/guide/DBE.html.