

State Revolving Fund

Disadvantaged Business Enterprise Program

Guidance to Borrowers & Contractors

Table of Contents

Section 1: Overview

Section 2: Definition of Disadvantaged Business Enterprise

Section 3: Disadvantaged Business Enterprise (DBE) Requirements and Contract Conditions **to be included in contracts**

- DBE related laws, rules, and regulations
- Equal Employment
- DBE Participation Goals
- Good Faith Effort for DBE Participation
- DBE Contract Terms and Conditions

Listing of Sources to Identify and Certify DBEs

Appendix A: DBE Reporting Form 5700-52A Part II

Appendix B: Report 6100-4 – DBE Subcontractor Utilization

Appendix C: Report 6100-3 – DBE Subcontractor Performance

Appendix D: Report 6100-2 – DBE Subcontractor Participation

State Revolving Fund

Disadvantaged Business Enterprise Program

Section 1: Overview

As stipulated by the Environmental Protection Agency (EPA), Nevada State Revolving Fund (SRF) borrowers and their contractors are required to make good faith efforts to utilize businesses classified as Disadvantaged Business Enterprises (DBEs) for goods and services associated with SRF financed projects. A borrower and their contractors should utilize DBEs through prime contracting, subcontracting, joint-ventures, other business relationships, and through the procurement of supplies, materials, and equipment.

Section 2: Definition of Disadvantaged Business Enterprise (DBE)

A DBE is a business owned and/or controlled by socially and economically disadvantaged individuals including Minority and Women Business Enterprises.

Minority Business Enterprise (MBE) – A business which is at least 51% owned and/or controlled by one or more U.S. citizens who are Black, Hispanic, Portuguese, Asian American, American Indian, or groups found to be economically and socially disadvantaged by the U.S. Small Business Administration pursuant to Section 8(a) of the Federal Small Business Act.

Women Business Enterprise (WBE) – A business which is at least 51% owned and/or controlled by one or more U.S. citizens who are women.

Section 3: Disadvantage Business Enterprise (DBE) requirements and contract conditions

The following pages include conditions which must be included in all bidding and contract documents for SRF financed projects including:

- DBE related laws, rules, and regulations
- Equal Employment
- DBE Participation Goals
- Good Faith Effort for DBE Participation
- DBE Contract Terms and Conditions

Nevada State Revolving Fund Disadvantaged Business Enterprise (DBE) and Contract Conditions

The DBE Solicitation and Contract Conditions must be physically included in all bidding and contract documents for SRF financed projects.

DBE Related Laws, Rules, and Regulations

This project is being financed in whole or in part by the Nevada State Revolving Fund (SRF). The borrower is required to comply with the following laws, rules and regulations and must ensure that their contractor(s) also comply with these laws, rules, and regulations.

1. Ensures access to facilities or programs regardless of race, color, national origin, sex, age or handicap: Title VI of the Civil Rights Act of 1964 (P.L. 88-352, Section 504 of the Rehabilitation Act, P.L. 93-112 (87 Stat. 355, 29 U.S.C. Sec. 794), Older Americans Act (P.L. 94-135, 89 Stat. 713, 89 Stat. 728 Sec. 303, 42 U.S.C. 6102).
2. Encourages recipients of federal funds to award construction, supply and professional service contracts to minority and women's business enterprises (MBE/WBE) and small businesses and requires recipients to utilize affirmative steps in procurement: Executive Orders 11625, 12138 and 12432; Section 129 of P. L. 100-590 Small Businesses Reauthorization & Amendment Act of 1988; Public Law 102-389 (42 U.S.C. 4370d); a 1993 appropriations act ("EPA's 8% statute"); Title X of the Clean Air Acts Amendments of 1990 (42 U.S.C. 7601 note) ("EPA's 10% statute").
3. Prohibits entering into contracts or sub-contracts with individuals or businesses who are debarred or suspended: Executive Order 12549, 3 CFR, 189 and 40 CFR Part 32. 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. Information on debarment is available at the following website: www.sam.gov.
4. 40 CFR Part 33 Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements.
5. Prohibits discrimination by federal contractors and subcontractors for reasons of race, color, religion, sex, and national origin: Equal Employment Executive Order 11246, as amended by Executive Orders 11375 and 12086 and subsequent regulations. Inclusion of the seven clauses (located below in the Equal Employment section) from Section 202 of E. O. 11246 as amended by E. O. 11375 and 12086 are required in all project related contracts and subcontracts over \$10,000.

Equal Employment (must be included in all contracts over \$10,000)

During the performance of this contract, the contractor agrees as follow:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

DBE Participation Goals

Borrowers and their prime contractors must follow and document good faith efforts to meet the DBE Participation Goals listed below:

| Goods or Services | MBE Participation Goal | WBE Participation Goal |
|---------------------|------------------------|------------------------|
| Construction | 2% | 2% |
| Equipment | 1% | 1% |
| Services | 1% | 2% |
| Supplies | 1% | 1% |

The DBE Participation Goals are not quotas – SRF will not penalize a borrower and their contractors if they cannot meet the goals. However, SRF will require a borrower and their contractors to make a good faith effort to meet these goals.

Good Faith Effort for DBE Participation

EPA defines “Good Faith Effort” to include, at a minimum, the following actions by a borrower and their contractors and sub-contractors:

1. Include DBEs on solicitation lists.
2. Assure that DBEs are solicited once they are identified.
3. Divide total requirements into smaller tasks to permit maximum DBE participation, where feasible. Encourage the joint submission of bids by multiple DBE businesses.
4. Establish delivery schedules which will encourage MBE/WBE participation, where feasible.
5. Encourage use of the services of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce (MBDA) OR State/Regional/Local equivalent.
6. Require that each party to a subgrant, subagreement, or contract award take the good faith efforts outlined.

DBE Contract Terms and Conditions

The following conditions must be included in all procurement contracts entered into by the borrower and their contractors and subcontractors for SRF financed projects:

1. The prime contractor must pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor’s receipt of payment from the loan recipient.
2. The prime contractor must document its efforts towards meeting the six “Good Faith Efforts for DBE Participation” even if the prime contractor has achieved its fair share objectives.
3. The prime contractor must notify the loan recipient in writing prior to the termination of any DBE subcontractor for convenience by the prime contractor.
4. If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six “Good Faith Efforts for DBE Participation” if soliciting a replacement subcontractor.
5. All DBE procurements whether from bid documents or subsequent draw request are to be **reported on form 5700-52A to the SRF.**
6. The prime contractor must submit **Form 6100-4 – DBE Subcontractor Utilization** to the borrower as part of bid proposals.
7. The prime contractor must ensure DBE subcontractors submit **Form 6100-3 – DBE Subcontractor Performance.** In turn, the prime contractor submits the forms to the borrower.
8. The prime contractor must provide **Form 6100-2 – DBE Subcontractor Participation** to DBE subcontractors. DBE subcontractors may submit Form 6100-2 to:

DBE/MBE/WBE Coordinator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (PMD-1)
San Francisco, CA 94105

| Report | Provided By: | Completed By: | Submitted To: | Appendix |
|--|---------------------|----------------------|----------------------|-----------------|
| DBE Reporting Form 5700-52A Part II | SRF | Borrower | SRF | A |
| Form 6100-4 | Borrower | Prime Contractor | Borrower | B |
| Form 6100-3 | Prime Contractor | Sub-Contractor | Borrower | C |
| Form 6100-2 | Prime Contractor | Sub-Contractor | EPA, Region 9 | D |

8. Each procurement contract signed 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 or other legally available remedies.”

**Disadvantaged Business Enterprise Utilization
Guidance to Borrowers and Prime Contractors**

Sources to Identify and Certify DBEs

| Source | Phone | Website/E-mail |
|--|---|---|
| Nevada Department of Transportation Civil Rights Program (DBE assistance and list) | External Civil Rights and Contract Compliance-Nevada Unified Certification Program 800-267-1971 | http://nevadadbe.com |
| Nevada Department of Transportation DBE Program | | http://nevadadot.com/nevadaDBE/dbe.aspx |
| Nevada Governor's Office of Economic Development – Procurement Outreach Program | 800-336-1600 | http://diversifynevada.com/programs-resources/procurement-outreach |
| Nevada Small Business Development Center (NSBDC) | 800-240-7094 DBE assistance 775-687-9921 | http://dbe.nsbdc.org/ |
| Hispanic Business Nevada | | http://hispanicbusinessnevada.com/ |
| US Environmental Protection Agency Small Business Program | | http://www.epa.gov/osbp/dbe_team.htm |
| US Small Business Admin. (SBA) | | http://www.sba.gov/ |
| Minority Business Development Agency-US Dept. of Commerce | | http://www.mbda.gov/ |

**Disadvantaged Business Enterprise Utilization
Guidance to Borrowers and Prime Contractors**

Appendix A

DBE Reporting Form 5700-52A Part II

When requesting loan draws which involve procurements to MBE/WBE businesses, information must be reported on forms provided by SRF as shown on the next page.

PART II. MBE/WBE PROCUREMENTS MADE DURING REPORTING PERIOD

EPA Financial Assistance Agreement Number: _____

| 1. Procurement Made By | | | 2. Business Enterprise | | 3. \$ Value of Procurement | 4. Date of Procurement MM/DD/YY | 5. Type of Product or Services ^A (Enter Code) | 6. Name/Address/Phone Number of MBE/WBE Contractor or Vendor |
|------------------------|---|-------|------------------------|-------|----------------------------|------------------------------------|---|--|
| Recipient | Sub-Recipient and/or SRF Loan Recipient | Prime | Minority | Women | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

Type of product or service codes:
 1 = Construction 2 = Supplies 3 = Services 4 = Equipment
 Note: Refer to Terms and conditions of your Assistance Agreement to determine the frequency of reporting. Recipients are required to submit MBE/WBE reports to EPA beginning with the Federal fiscal year quarter the recipients receive the award, continuing until the project is completed.
 EPA FORM 5700-52A - (Approval Expires 06/30/14)

Instructions for Part II:

For each MBE/WBE procurement made under this assistance agreement during the reporting period, provide the following information:

1. Check whether this procurement was made by the recipient, sub-recipient/SRF loan recipient, or the prime contractor.
2. Check either the MBE or WBE column. If a firm is both an MBE and WBE, the recipient may choose to count the entire procurement towards EITHER its MBE or WBE accomplishments. The recipient may also divide the total amount of the procurement (using any ratio it so chooses) and count those divided amounts toward its MBE and WBE accomplishments. If the recipient chooses to divide the procurement amount and count portions toward its MBE and WBE accomplishments, please state the appropriate amounts under the MBE and WBE columns on the form. **The combined MBE and WBE amounts for that MBE/WBE contractor must not exceed the "Value of the Procurement" reported in column #3**
3. Dollar value of procurement.
4. Date of procurement, shown as month, day, year. Date of procurement is defined as the date the contract or procurement was awarded, **not** the date the contractor received payment under the awarded contract or procurement, unless payment occurred on the date of award. **(Where direct purchasing is the procurement method, the date of procurement is the date the purchase was made)**
5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (e.g., enter 1 if construction, 2 if supplies, etc).
6. Name, address, and telephone number of MBE/WBE firm.
7. Send to SRF.

**This data is requested to comply with provisions mandated by: statute or regulations (40 CFR Part 30, 31, and 33); OMB Circulars; or added by EPA to ensure sound and effective assistance management. Accurate, complete data are required to obtain funding, while no pledge of confidentiality is provided.

The public reporting and recording burden for this collection of information is estimated to average 1 hour per

response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclosure or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Include the OMB Control number in any correspondence. Do not send the completed form to this address.

**Disadvantaged Business Enterprise Utilization
Guidance to Borrowers and Prime Contractors**

Appendix B

Form 6100-4 – DBE Subcontractor Utilization

The borrower must require potential prime contractors to submit Form 6100-4, as shown on the next page, to the borrower as part of bid proposals.

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

| | | | |
|-------------------------|--|------------------|--|
| Prime Contractor Name | | Project Name | |
| Bid/ Proposal No. | Assistance Agreement ID No. (if known) | Point of Contact | |
| Address | | | |
| Telephone No. | | Email Address | |
| Issuing/Funding Entity: | | | |

| I have identified potential DBE certified subcontractors | __ YES | __ NO | |
|---|-------------------------------|-----------------|--------------------------|
| If yes, please complete the table below. If no, please explain: | | | |
| | | | |
| Subcontractor Name/ Company Name | Company Address/ Phone/ Email | Est. Dollar Amt | Currently DBE Certified? |
| | | | |
| | | | |
| | | | |

Continue on back if needed

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

| | |
|-----------------------------------|-------------------|
| Prime Contractor Signature | Print Name |
| | |
| Title | Date |
| | |

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**Disadvantaged Business Enterprise Utilization
Guidance to Borrowers and Prime Contractors**

Appendix C

Form 6100-3 – DBE Subcontractor Performance

The prime contractor must require potential subcontractors to submit Form 6100-3, as show on the next page, as part of bid proposals. In turn, prime contractors submit the data to the borrower.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractor's bid or proposal package.

| | | | |
|-----------------------|--|-------------------------|--|
| Subcontractor Name | | Project Name | |
| Bid/ Proposal No. | Assistance Agreement ID No. (if known) | Point of Contact | |
| Address | | | |
| Telephone No. | | Email Address | |
| Prime Contractor Name | | Issuing/Funding Entity: | |

| Contract Item Number | Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies | Price of Work Submitted to the Prime Contractor |
|---|---|---|
| | | |
| DBE Certified By: ___ DOT ___ SBA ___ Other: _____ | | Meets/ exceeds EPA certification standards? ___ YES ___ NO ___ Unknown |

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

| | |
|-----------------------------------|-------------------|
| Prime Contractor Signature | Print Name |
| | |
| Title | Date |
| | |

| | |
|--------------------------------|-------------------|
| Subcontractor Signature | Print Name |
| | |
| Title | Date |
| | |

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**Disadvantaged Business Enterprise Utilization
Guidance to Borrowers and Prime Contractors**

Appendix D

Form 6100-2 – DBE Subcontractor Participation

The prime contractor must provide subcontractors the opportunity to submit Form 6100-2, as shown on the next page, to:

DBE/MBE/WBE Coordinator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (PMD-1)
San Francisco, CA 94105

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

| | | | |
|-----------------------|--|-------------------------|--|
| Subcontractor Name | | Project Name | |
| Bid/ Proposal No. | Assistance Agreement ID No. (if known) | Point of Contact | |
| Address | | | |
| Telephone No. | | Email Address | |
| Prime Contractor Name | | Issuing/Funding Entity: | |

| Contract Item Number | Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies | Amount Received by Prime Contractor |
|----------------------|--|-------------------------------------|
| | | |

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

Please use the space below to report any concerns regarding the above EPA-funded project:

| | |
|--------------------------------|-------------------|
| Subcontractor Signature | Print Name |
| | |
| Title | Date |
| | |

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.