

# Contract Packet for DBE Compliance

Learn about the Environmental Loans programs and find guidance at [dnr.wi.gov/aid/eif.html](http://dnr.wi.gov/aid/eif.html).

*This packet contains important information and required forms for compliance with EPA's Disadvantaged Business Enterprise (DBE) regulations.*

**ALL recipients of Clean Water Fund Program (CWFP) or Safe Drinking Water Loan Program (SDWLP) financial assistance must meet the requirements detailed on page 2 of this packet and use the federal form indicated.**

**IN ADDITION**, the department must designate some projects as "Federal Equivalency" projects each year. Any recipient whose project is Federal Equivalency must meet ALL of the requirements described in this packet. Read the two paragraphs below and see the chart on page 2 of this "Contract Packet for DBE Compliance" to determine whether your project will require your municipality to meet the smaller set of requirements or the larger/Federal Equivalency requirements for DBE compliance.

**CWFP Projects:** The department will select CWFP Federal Equivalency projects and notify the municipality of its selection prior to the bidding of that project.

**SDWLP Projects:** Starting with SFY 2020, all SDWLP projects in municipalities with a population of 10,000 or greater and total project costs of \$1,000,000 or greater will automatically be designated as Federal Equivalency.



For additional information regarding DBE procurement requirements, contact the [DNR loan project manager](#) assigned to your project or the DBE Specialist at 608-266-3915 or [JessicaL.Wagner@wisconsin.gov](mailto:JessicaL.Wagner@wisconsin.gov).

Visit [dnr.wi.gov/aid/documents/eif/guide/DBE.html](http://dnr.wi.gov/aid/documents/eif/guide/DBE.html)

DNR, Environmental Loans Section—CF/2, 101 S. Webster Street, PO Box 7921, Madison, WI 53707-7921  
PUB-CF-029 10/2019 Wisconsin DNR Environmental Loans Section CWFP 608-267-7475 SDWLP 608-266-0849

Page 1/9



Program implementation details are outlined in chs. [NR 162](#) and [NR 166](#), Wis. Adm. Code. [Legal notice](#): This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts. The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of Interior, Washington, D.C. 20240. This publication is offered in other formats upon request, call 608-267-9481.



# WHICH DBE REQUIREMENTS APPLY TO YOUR MUNICIPALITY OR 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 & SDWLP		
	Non-federal Equivalency Projects	CWFP & SDWLP Federal Equivalency Projects w/ Costs @ <i>or Below</i> \$250,000	CWFP & SDWLP Federal Equivalency Projects w/ Costs <i>Over</i> \$250,000
<b>Solicit for DBEs</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Submit DBE Good Faith Certification Form</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Use Federal Form 6100-4</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>Establish and Keep a Bidders List</b>			<b>X</b>
<b>Include Extra Conditions in Contracts</b>		<b>X</b>	<b>X</b>
<b>Meet Contract Administration Requirements</b>		<b>X</b>	<b>X</b>

# 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 by EPA for financial assistance agreement recipients to ensure that all disadvantaged business enterprises (DBEs) have the opportunity to compete for procurements funded by EPA financial assistance dollars.

## What are the Six Good Faith Efforts?

In order to demonstrate a good faith effort, the recipient and the prime contractor must, at a minimum, fulfill the following six (6) 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 the [List of Certified DBEs](#) for agencies in Wisconsin and bordering states providing similar support.
6. If the prime contractor awards contracts/procurements, require subcontractors to take the affirmative steps above.

Note: For additional information regarding the solicitation requirements, please see the “**DBE Solicitation Guidance**” on pages 8 and 9 of the “Contract Packet for DBE Compliance”.

## 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 **EI Form 8700-294**. In addition, **all municipalities that utilize one or more DBEs** in their CWF or SDWLP projects must **submit EPA Form 6100-4**. These are the only DBE requirements for projects that are non-Federal Equivalency.

**EPA Form 6100-4** – The DBE Program Subcontractor Utilization Form captures the prime’s intended use of an identified DBE subcontractor, and the estimated dollar amount of the subcontract. Recipients are required to have the prime contractors complete the form and submit as part of their bid package.

**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 via this Internet address: <http://epls.arnet.gov/>.
- 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.**

**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 DBE<sup>1</sup> subcontractors<sup>2</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 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.

**EPA FORM 6100-4 (DBE Subcontractor Utilization Form)**

**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).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

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.

**EPA FORM 6100-4 (DBE Subcontractor Utilization Form)**



# DISADVANTAGED BUSINESS ENTERPRISE (DBE) SOLICITATION GUIDANCE

**All municipalities** applying for funds from the Clean Water Fund Program (CWFP) or the Safe Drinking Water Loan Program (SDWLP) **must make good faith efforts** to solicit disadvantaged business enterprises (DBEs) in their construction projects. When procuring construction work, equipment, raw materials, or supplies for a project, a municipality must comply with the DBE solicitation requirements whenever the procurement must be bid under the state procurement laws. DBEs include, but are not limited to, minority business enterprises (MBEs) and women business enterprises (WBEs).

**Prime contractors and subcontractors** participating in a CWFP or SDWLP funded project **must also make good faith efforts** whenever they subcontract for construction work, equipment, raw materials, or supplies.

**IMPORTANT: Good faith efforts include solicitation** of DBEs **and other steps** identified in Form 8700-294, DBE Good Faith Certification Form, which the municipality must complete before receiving a loan. See Forms section below.

**When advertising bids** for a CWFP or SDWLP funded project, municipalities and contractors must meet the DBE requirements, including the solicitation requirements below. Prime contractors and subcontractors must continue to use the solicitation methods described below under "Three Options to Meet Solicitation Requirements" when hiring any subcontractors for CWFP or SDWLP projects, even if utilization goals have already been met. Municipality must submit to DNR an affidavit of publication along with the advertisement.

## Three Options to Meet Solicitation Requirements

Municipalities, when hiring prime contractors; prime contractors, when hiring subcontractors; and subcontractors, when hiring other subcontractors, must do **at least one** of the following in order to comply with DBE solicitation requirements:

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 can add a simple 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 AND SUBCONTRACTORS:** To make a good faith effort when subcontracting, a contractor can advertise for subcontractors with an ad that includes a simple 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, [wisconsin.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx](http://wisconsin.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx)). This good faith effort option is available for municipalities, prime contractors and subcontractors to comply with the DBE requirements. The individual that makes 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 the SDWLP, but there are other sources available. Any certification must meet the same requirements as those used for UCP-listed businesses. Any firm providing DBE certifications must be approved by the U.S. Environmental Protection Agency (USEPA).

3. **Utilize DBEs registered with the UCP** (e.g., WisDOT UCP, [wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx](https://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx)). Municipalities must require prime contractors to complete and submit with bids EPA Form 6100-4, DBE Subcontractor Utilization Form, for any DBE subcontractors they intend to use on the contract. **Municipalities must then submit those forms to DNR along with other bidding documents prior to loan closing.**

## 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.**

## 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](https://dnr.wi.gov/Aid/documents/EIF/Forms/Forms.html), or by contacting the DBE Specialist listed below.

**[EIF Form 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.

**[EIF Form 8700-294a](#) – DBE Contacts Worksheet.** It is not mandatory to submit this form when following Option 2 to meet good faith efforts, 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.

**[EPA Form 6100-4](#) – DBE Program Subcontractor Utilization Form.** This form captures the prime contractor’s intended use of an identified DBE subcontractor, and the estimated dollar amount of the subcontract. This form is further explained on page 3 of the “Contract Packet for DBE Compliance”.

## Contact Information

For additional information regarding DBE procurement requirements, contact:

- [DNR loan project manager](#) assigned to your project; or
- Jessica Wagner, DBE Specialist, at 608-266-3915 or [JessicaL.Wagner@wisconsin.gov](mailto:JessicaL.Wagner@wisconsin.gov).

Information is also available on the Environmental Loans website at [dnr.wi.gov/Aid/documents/EIF/Guide/DBE.html](https://dnr.wi.gov/Aid/documents/EIF/Guide/DBE.html).