



*Delaware Health  
And Social Services*

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**DIVISION OF MANAGEMENT SERVICES**

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PROCUREMENT

DATE: February 9 2011

**HSS 11 035**

**CERTIFIED LABORATORY SUPPORT FOR THE SAFE  
DRINKING WATER ACT (SDWA) COMPLIANCE MONITORING  
FOR THE OFFICE OF DRINKING WATER IN THE DIVISION OF  
PUBLIC HEALTH**

FOR

DIVISION OF PUBLIC HEALTH

Date Due: March 9, 2011  
11:00 AM

**ADDENDUM # 2** Appendix H: Additional Terms and Conditions – Disadvantaged Business Enterprise Objectives

Please Note:

THE ATTACHED SHEETS HEREBY BECOME A PART OF THE  
ABOVE MENTIONED BID.

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Bruce Krug  
PROCUREMENT ADMINISTRATOR

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William Ingram  
Division of Public Health

## **APPENDIX H**

### **ADDITIONAL TERMS AND CONDITIONS**

- DISADVANTAGED BUSINESS ENTERPRISE (DBE) OBJECTIVES
  - PRIME CONTRACTOR DBE COMPLIANCE STATEMENT  
(Becomes Contract Appendix C)
  - 40 CFR DBE ADMINISTRATIVE REQUIREMENTS
    - DELAWARE DHSS DBE GUIDANCE

## ADDITIONAL TERMS AND CONDITIONS

### Disadvantaged Business Enterprise

#### Fair Share Objectives and Good Faith Efforts

DHSS/DPH and Contractors shall abide by applicable portions of 40 CFR Part 33 of federal regulations pertaining to Disadvantaged Business Enterprise Program.

*Disadvantaged Business Enterprise* (DBE) are entities owned and/or controlled by a socially or economically disadvantaged individual(s). (Includes MBEs and WBEs)

*Minority Business Enterprise* (MBE) are entities that are at least 51 percent owned and or controlled by minorities.

*Women's Business Enterprises* (WBE) are entities that are at least 51 percent owned and/or controlled by women.

#### Fair Share Objectives:

The DBE fair share objectives represent the goal for the percentage of the grant funding awarded to the State of Delaware that is intended to be spent on goods and services provided by Disadvantaged Business Enterprises.

	<u>%MBE</u>	<u>% WBE</u>
1. Construction	2.90	3.69
2. Supplies	2.41	2.41
3. Services	4.85	3.62
4. Goods/Equipment Combined	11.69	12.62

The above goals are not a quota and apply to DBE participation only.

#### Good Faith Efforts:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities by placing qualified 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. Dividing total requirements, when economically feasible, into small tasks or quantities, to permit maximum participation of DBEs when subcontracting.

4. Consider subcontracting 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 federal Small Business Administration and the Minority Business Development Agency of the Department of Commerce, and Delaware's Office of Minority and Women Owned business when finding DBEs. Delaware's Office of Minority and Women Owned business maintains a website that contains information on MBE/WBE firms that have been certified in Delaware. <http://omwbe.delaware.gov/certdir.app> This database is searchable by North American Industry Classification System. All DBE's that have qualifications that match the subcontracting opportunity shall be notified.

Compliance Requirements For Disadvantaged Business Enterprise Program:

1. For work financed with grant funds, contractors are required to undertake the 6 Good Faith Efforts listed above and to sign the attached compliance statement.

2. Contractors must abide by all applicable administrative requirements found in 40 CFR Section 33.302. (Please see attachment A for more information)

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 will be considered a material breach of contract which may result in termination of this contract or other legally available remedies.

State of Delaware  
Delaware Department of Health and Social Services

**PRIME CONTRACTOR DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
COMPLIANCE STATEMENT**

COMPANY NAME : \_\_\_\_\_

CONTRACT NAME : \_\_\_\_\_

CONTRACT NUMBER \_\_\_\_\_

As the duly authorized representative for the above named company, I certify that the six good faith efforts have been performed in conformance with DBE regulations found in 40 CFR, Section 33.301. All efforts have been properly documented and such documentation is subject to audit by review by the US Environmental Protection Agency or the State of Delaware Department of Health and Social Services to further ensure compliance. I understand that by signing this statement that the DBE regulations 40 CFR, Section 33.105 include compliance and enforcement provisions to which the grant recipient and sub-recipients are subject. I understand signing this statement that the DBE regulations 40 CFR, Section 33.302 include additional contract administrative requirements that I must comply with (Attachment A).

As a prime contractor for the Delaware Department of Health and Social Services on this project, I shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. I shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. I understand that failure to do so is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

\_\_\_\_\_  
Signature of Duly Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Duly Authorized Representative

Attachment A to Appendix H

**Other Administrative Requirements Found in 40 CFR Section 33.302**

- a) Prime contractors must pay their subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.
- (b) Prime contractors must notify the State of Delaware Department of Health and Social Services / **Division of Public Health** 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 prime contractor must employ the six good faith efforts described in §33.301 if soliciting a replacement subcontractor.
- (d) Prime contractors must employ the six good faith efforts described in §33.301 even if the prime contractor has achieved its fair share objectives under subpart D of this part.
- (e) Prime contractors must 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 contractor, 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 contractor. DBE subcontractors may send completed copies of EPA Form 6100-2 directly to Ms. Ramona McQueen, EPA Region 3, 1650 Arch Street (3PM00), Philadelphia PA.19103-2029.
- (f) Prime contractors must have DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form and include this form as part of the prime contractor's bid or proposal package.
- (g) Prime contractors must complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package or submit this information upon DNREC's request if work has already been contracted.
- (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 ([www.epa.gov/osbp/dbe\\_forms.htm](http://www.epa.gov/osbp/dbe_forms.htm)) on the Internet or directly from EPA OSDBU (202-566-2933).
- (i) Prime contractors must include the statement, "I shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. I shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. I understand that failure to do so is a material breach of this contract which may result in the termination of this contract or other legally available remedies." in all subcontracting requests for proposals.

## **Delaware Department of Health and Social Services Disadvantaged Business Enterprise Guidance**

### **What is the purpose of the six good faith efforts?**

The six good faith efforts are methods used by EPA grant recipients to ensure that disadvantaged business enterprises (DBE's) have the opportunity to compete for contracts supported by federal grant dollars.

### **What are the six good faith efforts?**

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.

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. 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.

Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

Use the services and assistance of the SBA, Minority Business Development Agency of the Department of Commerce, and State of Delaware Office of MBE/WBE.

If the prime contractor awards subcontracts, require the prime contractor to take the 6 steps listed above.

### **What are the New Contract Administration Requirements?**

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

A 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 recipient.

A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts if soliciting a replacement subcontractor.

A 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 Are the New Forms Associated With the New Contract Administration Provisions?**

EPA Form 6100-2 - DBE Program Subcontractor Participation Form. This form gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have. Prime contractor must supply to subcontractors.

EPA Form 6100-3 - DBE Program Subcontractor Performance Form. This form captures an intended subcontractor's description of work to be performed for the prime contractor and the price of the work submitted to the prime. *Must be included in prime contractors bid package.*

EPA Form 6100-4 – DBE Program Subcontractor Utilization Form. This form captures the prime's intended use of an identified DBE subcontractor, and the estimated dollar amount of the subcontract. *Must be included in prime contractors bid package.*

Form	Requirement	Provided by:	Completed by:	Submitted to:
EPA Form 6100-2	Prime contractors must provide to subcontractors	Prime Contractor	DBE Subcontractors	EPA Region 3 DBE Coordinator Ms. Ramona McQueen by the DBE subcontractors
EPA Form 6100-3	Prime contractors must provide to subcontractors	Prime Contractor	DBE Subcontractors	Prime Contractor for inclusion in bid package to DNREC
EPA Form 6100-4	Prime contractors submit form to DNREC upon request.	DNREC	Prime Contractors	Prime Contractor for inclusion in bid package to DNREC

### **How do you develop a solicitation list of MBE/WBE Contractors?**

Delaware's Office of Minority and Women owned business maintains a website that contains information on MBE/WBE firms that have been certified in Delaware. <http://omwbe.delaware.gov/certdir.app> This database is searchable by North American Industry Classification System.

**What information must be retained on the solicitation lists that you develop during the bid process?**

- (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.