

**CONTRACT PROVISIONS
RELATIVE TO THE UTILIZATION OF
DISADVANTAGED BUSINESS ENTERPRISE**

Compliance with the requirements of this document and attachments satisfies the Disadvantaged Business Enterprise (DBE) requirements for this construction contract. **Failure to take the six (6) affirmative steps listed under Good Faith Effort Requirements, prior to bid opening and to submit SWRCB Form 4500-3 Disadvantaged Business Enterprise Program DBE Subcontractor Performance Form and SWRCB Form 4500-4 Disadvantaged Business Enterprise Program DBE Subcontractor Utilization Form with the bid package shall cause the bid to be rejected as a non-responsive bid.**

The Owner advises potential bidders that the project may be funded in whole or part with federal loan or grant funds through the California Safe Drinking Water State Revolving Fund, and, therefore federal Disadvantaged Business Enterprise (DBE) regulations apply to this project. (Reference 40 Code of Federal Regulations Part 33 – Participation by Disadvantaged Business Enterprises in U.S. Environmental Protection Agency Programs).

Disadvantaged Business Enterprises are:

- Entities owned and/or controlled by socially and economically disadvantaged individuals as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) (10% statute), and Public Law 102-389 (42 U.S.C. 4370d) (8% statute), respectively;
- Minority Business Enterprise (MBE) - entities that are at least 51% owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively;
- Women Business Enterprise (WBE) - entities that are at least 51% owned and/or controlled by women;
- Small Business Enterprise (SBE);
- Small Business in a Rural Area (SBRA);
- Labor Surplus Area Firm (LSAF); or
- Historically Underutilized Business (HUB) Zone Small Business Concern or a concern under a successor program.

The DBE rule requires that responsive bid shall conform with “Good Faith Efforts” to increase DBE awareness of procurement opportunities through race/gender neutral efforts. Race/gender neutral efforts are ones which increase awareness of contracting opportunities in general, including outreach, recruitment and technical assistance. Bidder agrees that it will cooperate with and assist the Owner in fulfilling the DBE Good Faith Effort Requirement achieving “fair share objectives” and will exercise “Good Faith Efforts” to achieve such minimum participation of small, minority and women owned businesses. In particular, in submitting a bid, the bidder shall, in the selection of any and all contractors, subcontractors, and vendors for the procurement of equipment, supplies, construction, and services related to the project, at a minimum, undertake the following affirmative “Good Faith Efforts” steps:

Good Faith Effort Requirements

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practical through outreach and recruitment activities. For Tribal, State and Local Government Recipients, 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. Posting solicitations for bids or proposals for a minimum of 30 calendar days in a local newspaper, before the bid opening date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs.
4. Encourage contracting with a group of DBEs when a contract is too large for one firm to handle individually.

5. Use the services of the SBA and/or Minority Business Development Agency (MBDA) of the US Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the above steps.

The forms listed in the table below and attached; must be completed and submitted with the GFE:

FORM NUMBER	FORM NAME	REQUIRE-MENT	PROVIDED BY	COMPLETED BY	SUBMITTED TO
SWRCB Form 4500-2	DBE Sub-Contractor Participation Form	As Needed to Report Issues	City to Prime Contractor	Sub-contractor	EPA DBE Coordinator
SWRCB Form 4500-3	DBE Sub-Contractor Performance Form	Include with Bid Proposal Package	Prime Contractor	Sub-Contractor	SWRCB by City after bidding
SWRCB Form 4500-4	DBE Sub-Contractor Utilization Form	Include with Bid Proposal Package	City	Prime Contractor	SWRCB by City after bidding

The completed forms must be submitted with each Bid or Proposal.

Other Requirements:

1. The apparent successful low bidder must submit documentation showing that, prior to bid opening, the required “Good Faith Efforts” were made. The documentation must be received by the Owner within 5 working days following bid opening, or within 5 working days after request for documentation if initial apparent successful low bidder is disqualified for any reason, except SWRCB Forms 4500-3 and 4500-4 which are to be submitted **with the bid**. **Failure to submit these forms with the bid will cause the bid to be rejected as non-responsive.**
2. If the apparent successful low bidder is rejected or considered as non-responsive and/or has any non-responsive low DBE sub-bidder, a complete explanation must be provided to the Owner.
3. Under the DBE Program, entities can no longer self-certify and contractors and sub-contractors must be certified at bid opening. Contractors and sub-contractors must provide to the City proof of DBE certification. Certifications will be accepted from the following:
 - The U.S. Environmental Protection Agency (USEPA)
 - The Small Business Administration(SBA)
 - The Department of Transportation’s State implemented DBE Certification Program (with U.S. citizenship)
 - Tribal, State and Local governments
 - Independent private organization certifications

If an entity holds one of these certifications, it is considered acceptable for establishing status under the DBE Program.
4. If additional procurement becomes necessary after the award of the prime contract, the “Good Faith Efforts” shall be applied.
5. Any deviation from the information contained in SWRCB Forms 4500-3 and 4500-4 shall not result in a reduction of Disadvantaged Business Enterprise participation without prior approval of the Owner.
6. Failure of the apparent low bidder to perform the six affirmative “Good Faith Efforts” steps prior to bid opening and/or to submit SWRCB Forms 4500-3 and 4500-4 with its bid will lead to its bid

being declared non-responsive by the Owner. The Owner may then award the contract to the next low responsive, responsible bidder meeting the requirements of these contract provisions.

7. Prime contractor must pay its subcontractor(s) for satisfactory performance no more than 30 days from the prime contractor's receipt of payment.
8. Prime contractor must provide each proposed subcontractor/supplier/vendor copies of SWRCB Forms 4500-2.

Fair Share Objectives

Interested bidders are advised that the following fair share objectives have been established for this project. Fulfillment of the Disadvantaged Business Enterprise requirement is based on documented completion of the Good Faith Effort Requirements, not level of Disadvantaged Business Enterprise participation proposed/achieved.

	Minority Business Enterprise	Women's Business Enterprise
CONSTRUCTION	11%	4%
SUPPLIES	2%	1%
SERVICES	4%	2%
EQUIPMENT	2%	2%

Semiannual DBE Utilization Reporting

In order to fulfill federal reporting requirements, the selected prime contractor must, using Attached Form UR-334, report to Owner on an annual basis, their utilization of Minority Business Enterprise and Women's Business Enterprise subcontractor/supplier/vendors. The Owner will compile all Utilization reports from prime contractor(s) and sub-contractor(s) into one report and submit to funding agency. Form are due by December 1 each year and/ or at project close out.