

Revolving Funds (SRF/SWQIF/DWRF) Design Phase Guidance

Michigan Department of Environmental Quality

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A. Competitive Bidding Required

In most cases, contracts for project construction of \$50,000 or more must be awarded through an open, competitive bidding process whereby a solicitation to bid is made by means of a formally advertised public notice. Exceptions to this requirement are discussed below in Sections B through F. Unless otherwise approved by your Michigan Department of Environmental quality (MDEQ) project manager, an advertisement for bids must be published at least 30 days prior to the date on which bids are scheduled to be opened. Although all applicants are encouraged to place bids in local publications to ensure local contractors and potential subcontractors are aware of bidding opportunities, revolving fund projects must be advertised through at least one statewide vehicle. A number of state wide advertising options exist, one of which is maintained by the Michigan Infrastructure and Transportation Association (MITA). That site can be accessed at: www.mitaads.com.

B. Construction Management Projects

Construction management (CM) involves an owner using a third party to manage the procurement and administration of construction contracts. That third party can be the design engineer or a contractor who specializes in CM. The CM services are detailed in a contract between the owner and the CM firm and normally include the services that a general contractor would typically provide. The construction work itself is then broken down into trade categories — such as electrical, masonry, mechanical, painting, roofing, and so on — which will be provided by trade contract providers. The key difference between a CM project and the typical construction project is that these trade contracts are usually between the CM firm and the trade contract providers, although a variant has the trade contracts being between the owner and the trade contract providers. The CM services contract will detail the role of the CM firm and stipulate which party — CM firm or owner — will contract with the trade contract providers.

The intent of the CM process is to save money, by replacing the standard 15 percent overhead rate charged by a general contractor with a lower fee charged by the CM firm. Also, since the subcontracting cost in many trade categories will be less than \$50,000, loan program competitive bidding requirements will not apply to those trade contracts. Thus, the owner or CM firm will not be required to solicit multiple quotes for those contracts but can instead use the trade contract provider of its choice. The CM process also allows for liquidated damages, bonding, and other contract issues to be tailored for each contract, based on the nature and the size of the scope of work. Consequently, the performance and payment bonds may be absent from trade contracts developed using the CM process.

Where the owner contracts directly with the individual subcontractors, owners are cautioned to examine their in-house capabilities to administer multiple contracts, which will require more active participation. Additionally, making sure the entire job is adequately bonded is an area that needs to be examined more closely, since bonding requirements are satisfied by each subcontractor rather than through the CM.

CM projects are eligible for loan assistance provided a number of conditions are met:

1. Notification of the owner's intent to use CM needs to be made by no later than the date set in the executed project milestone schedule for the submission of draft plans and

specifications. This notification must identify all of the trade contracts that will be handled under CM, with the estimated cost for each contract. All equipment – such as generators, pumps, or SCADA – which will be acquired by the owner for installation by a CM trade contract provider must also be identified at this time.

2. The owner or CM firm will be required to satisfy loan program competitive bidding requirements for any trade contract or equipment acquisition estimated to cost \$50,000 or more. Loan participation in any trade contract or equipment acquisition that is not competitively bid will be limited to \$50,000.
3. No subcontracts, which have the CM self-performing work, will be approved. Despite the competitive bidding requirements for each subcontract greater than \$50,000, the appearance of a conflict of interest is created where the CM is evaluating the performance, change order requests, or quotations for its own trade contracts.
4. Work within a specific trade category cannot be subdivided in order to avoid loan program competitive bidding requirements. However, the acquisition of equipment by the owner for installation by a trade contractor will not be considered a circumvention of this requirement
5. DEQ approval of final plans and specifications will still be required.
6. The Part II Application submittal must include a copy of the executed CM services contract.
7. The Part III Application submittal must include (a) adequate supporting documentation (e.g., proposals or quotes) for those trade contracts that are less than \$50,000 and (b) copies of the bid advertisement(s), bid tabulations, successful bidders' proposals, and the resolutions of tentative contract award for all competitively-bid construction contracts.
8. No CM contracts, which provide for a guaranteed maximum price (GMP) prior to receiving quotes/bids on subcontracts, will be approved. As such, the GMP is not a competitively bid price. Construction costs for the loan award will be based on the subcontractor quotes/bids received.

C. Design-Build Projects

The design-build (D-B) procurement concept is an alternative to the traditional design, bid, and then build process. The D-B contractor provides both project design and construction through a single contract with the owner. Thus, one contractor, either a single firm or a consortium, is responsible for designing and constructing the project. The intent of D-B is to save both time and money, in part by eliminating the potential conflict between the designer and the builder that can arise during project construction.

The procurement of a D-B contractor is normally handled through a two-phase process. The owner will first issue a Request for Proposals (RFP), which will include a clearly defined scope of work and performance requirements. Potential D-B contractors will send proposals to the owner that include information on their qualifications and proposed technical approach to the project. After assessing the responding firms' expertise and prior accomplishments, the owner will initiate

a second phase in which a short list of qualified firms are allowed to submit detailed proposals to design and construct the project.

D-B projects are eligible for loan assistance provided several conditions are met:

1. Completion of the State Environmental Review Process and MDEQ approval of the project plan will not be required prior to issuance of the RFP. However, the D-B process must be tailored to ensure the submittal of a final project plan that includes all of the elements identified in state law (MCL§324.5303) and its attendant rules (Mich. Admin. Code R323.952 for SRF/SWQIF and MCL§324.5405 for DWRf) so that the MDEQ can rank the cost-effective alternative on the state's annual project priority list. Additionally, the municipality/water supplier should evaluate any environmental requirements or mitigation that may need to be defined in the RFP.
2. The RFP issued by the municipality/water supplier will be accepted by the MDEQ as equivalent to "a set of plans and specifications suitable for bidding" to meet the requirements of MCL§324.5308(1)(e). Submittal of the information specified in Items 3 and 4 below will allow the MDEQ Order of Approval to be processed prior to the required issuance of a Part 41, Sewerage Systems, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)/Safe Drinking Water Act, 1976 PA 399, as amended (Act 399) construction permit; refinancing will no longer be necessary.
3. The Part II Application submittal must include adequate documentation of the procurement process, including a copy of the RFP(s) and the short list of qualified firms.
4. The Part III Application submittal must include a tabulation of the cost proposals made by the qualified firms and the proposal submitted by the selected contractor.

D. Minimal Cost Procurements

Competitive bidding requirements will be waived when the cost of a good or service to be procured as part of a loan project will be less than \$50,000. Goods might include material such as pipe or equipment such as pumps, while services might include compaction testing by an independent contractor.

Minimal cost procurements are eligible for loan assistance provided the municipality/water supplier's Part II Application submittal includes adequate documentation that the cost of the good or service is less than \$50,000.

E. Sole Source Procurements

Competitive bidding requirements will be waived when a good or service needed as part of a loan project is only available from one source.

Sole source procurements are eligible for loan assistance provided the municipality/water supplier's Part II Application submittal includes a justification for using a good or service that is only available from one source and the basis for its estimated cost.

F. Request for Quotes/Qualifications Process Projects

Competitive bidding requirements can be waived when the municipality chooses to use a Request for Quotes/Qualifications (RFQ) process to accomplish project construction on a SWQIF loan project. Under the RFQ process, the municipality would establish a list of pre-qualified contractors for its SWQIF project construction. Each homeowner targeted for project construction, or the municipality, would then enter into an agreement with one of the pre-qualified contractors to perform the private property work necessary for the completion of the SWQIF loan project.

Construction under the RFQ process is eligible for SWQIF loan assistance provided a number of conditions are met:

1. Notification of the owner's intent to use the RFQ process needs to be made by no later than the date set in the executed project milestone schedule for the submission of draft plans and specifications.
2. The list of pre-qualified contractors established by the RFQ process must include a sufficient number of licensed contractors to accomplish the timely completion of the municipality's project.
3. The Part II Application submittal must include a copy of the list of pre-qualified contractors and an explanation of how it was obtained.

Please note that a municipality need not utilize the RFQ process but may instead choose to accomplish SWQIF project construction by hiring a contractor through the use of the standard competitive bidding process.

G. Requirements for SRF/SWQIF/DWRF Plans and Specifications

Section 5308(1)(e) (SRF/SWQIF) and Section 5409(1)(f) (DWRF) of the NREPA, requires a municipality/water supplier applying for loan assistance to prepare and submit "a set of plans and specifications suitable for bidding." Design documents will meet this requirement if:

1. The final design documents present a project that corresponds with the one described in the state-approved project plan;
2. The final design documents include a bid proposal form which allows the segregation of costs for all items that are not eligible for loan assistance;
3. The final design documents include the *Required Standard Contract Language: Clean Water State Revolving Fund and Drinking Water Revolving Fund*. The Debarment Certification portion must be completed for any contract of \$25,000 or more, the Disadvantaged Business Enterprises portion for any contract and the

Davis-Bacon portion for all contracts over \$2,000 (SRF and DWRP only). The DBE program has been created by the EPA to increase the participation of small, minority and women owned firms in the procurement process for goods and services as required by rule, 40 CFR Part 33. Prime Contractors bidding on a project must follow, document, and maintain records of their Good Faith Efforts to ensure that DBEs have the opportunity to participate in a project by increasing DBE awareness of procurement efforts and outreach. Detailed information about the required Good Faith Efforts are detailed in Attachment 1 and Attachment 2 of this document. For additional DBE questions contact EPA's Region 5 DBE Program Contact Adrienne Callahan at 312-353-5556 or callahan.adrienne@epa.gov.

4. The final design documents meet the requirements in Part 41 of the NREPA and its related administrative rules for approvable plans and specifications for the SRF/SWQIF and Act 399 and its related administrative rules for the DWRP. In particular, the design documents must conform to the design standards and guidance provided in the Recommended Standards for Wastewater Facilities (SRF/SWQIF)/Recommended Standards for Water Works (DWRP) published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (commonly known as the Ten State Standards); and
5. The final design documents were prepared and sealed by a professional engineer registered in Michigan. The design engineer may either be a qualified employee of the municipality/water supplier that is applying for SRF loan assistance or a consulting engineer hired by the municipality/water supplier on a contractual basis.

The proper SRF/SWQIF/DWRP project number, including the project segment suffix if appropriate, should appear on the cover of the contract documents, specifications books, and plan sheets. The procedure for the submittal, review, and approval of design documents is outlined in Section M below.

Under state law, the municipality/water supplier applying for loan assistance is responsible for obtaining all federal, state, and local permits, or clearances that are required for the project and must perform any surveys or studies that are required in conjunction with such permits or clearances. All appropriate provisions, conditions, and mitigative measures included in such studies, surveys, permits, or clearances must be incorporated into the final design documents.

H. Requirements for SWQIF Plans and Specifications

Two types of projects can qualify for SWQIF loan funding: (a) projects to remove clear water (groundwater or storm water infiltration or inflow) from sanitary or combined sewer house leads and (b) projects to replace or upgrade failing on-site septic systems (OSSS) that are adversely affecting public health or the environment. Generic plan sheets and specifications – as opposed to site-specific documents for each property – will suffice for clear water removal projects. Site-specific health department permits will suffice as plans and specifications for an OSSS project. The permits for all OSSS sites must be received by the MDEQ project manager at least one week before the quarterly design document approval deadline, which will require the municipality to provide sufficient lead time (perhaps months) for the local health department review/approval.

I. Bid Allowances

To a certain extent, allowances circumvent the bidding process because the value of the allowance is specified by the project owner. Municipalities and their consultants are encouraged to avoid the use of allowances and, instead, fully develop specifications to enable bidders to competitively establish the cost of each good and service in the construction contract. However, many types of bid allowances can receive funding if appropriate documentation is provided to your MDEQ project manager to support both the need for the allowance and its estimated cost. Please contact your MDEQ project manager if you have any questions about the possible use of an allowance.

A type of allowance that is not eligible for inclusion in a loan is one that is not linked to specific goods or services. Such allowances are typically identified as "allowance for differing site conditions" or "provisional allowance" in the design documents. This type of allowance is deemed to be an ineligible addition to the standard 6 percent contingency that will be included in the loan. Further information regarding bid allowances can be found in the Eligibility Guidances for the Drinking Water and the Clean Water State Revolving Fund.

J. Base Bidding

Specifications may reference equipment that is to be supplied by naming the model produced by a particular manufacturer. Traditionally, such specifications include a caveat that the bidder may instead supply equipment from a different manufacturer that meets the particulars in the owner's specification (the "or equal" approach). Another approach is base bidding, where the model produced by a particular manufacturer must be supplied. Base bidding may be used in a project to provide compatibility with existing equipment, reduction of operation or maintenance costs, or a proven track record of performance. Please contact your MDEQ project manager if you have any questions about the possible use of base bidding.

K. Alternates

Alternates are additional items or project enhancements that are not part of the base bid. Alternates are structured to provide for greater flexibility in meeting budget goals. If bids come in under budget, the owner may accept alternates that, when added to the base bids, do not exceed the authorized construction budget. Under certain circumstances, the alternates may be deductive, where bidders are requested to offer amounts to be deducted from the lump sum bid based on a savings from choosing the alternate.

Alternates are allowable to the extent that they are consistent with and address the critical needs identified in the project plan and meet requirements of Part 41/Act 399 construction permits. Both project management and district engineering staff will review alternatives for programmatic and technical acceptability.

L. Contractor Pre-Qualification

In most cases, the assessment of a contractor's qualifications and apparent ability to meet the requirements of the contract must occur during the evaluation of bid proposals. Pre-qualification of contractors prior to bidding may be considered only where it can be justified based on special expertise requirements that would limit the availability of capable contractors. Notification of the owner's pre-qualification process, the rationale for its use, and the actual description of the owner's pre-qualification process must be submitted no later than the date set in the executed project milestone schedule for the submission of draft plans and specifications.

M. Force Account Construction and Inspection

The use of municipal/water supplier employees to construct a project (force account labor) may be approved for assistance when all of the following conditions are met:

1. The construction work can be effectively performed by permanent staff on the current payroll of the applicant, or the municipalities for which the project is being constructed.
2. The total labor cost (salaries, fringe benefits, travel expenses) is less than \$50,000.
3. The employees involved in project construction will perform the construction work concurrent with their regular duties, without the hiring of any additional staff.
4. The applicant can demonstrate that force account labor will be cost-effective when compared with contracted labor.

A municipality/water supplier may use its own staff to perform resident inspection of project construction, either independent from or concurrent with resident inspection performed by a contracted engineering firm. The documentation necessary to support the inclusion of a municipality/water supplier's resident inspection costs is outlined in the "Instructions for Completing the Project Cost Worksheet" that accompanies the SRF/SWQIF/DWRF Part II Application. Services are only eligible if specifically linked to the project and actual hours are documented on timesheets.

N. Part 41/Act 399 Construction Permits

To obtain an SRF loan for a project involving the construction or alteration of a wastewater transport or treatment facility, the municipality must obtain a construction permit issued under the provisions of Part 41 of the NREPA. To obtain a DWRF loan for a project that involves the construction or alteration of drinking water supply, storage, transmission or treatment facility, the water supplier must obtain a construction permit issued under the provisions of Act 399. An application for this construction permit must be submitted to the appropriate MDEQ district office by no later than the date set in the executed SRF/DWRF project milestone schedule for the submission of final design documents.

A municipality will not need a Part 41 of the NREPA construction permit for a SWQIF loan project. Instead, local building codes and inspections will cover the work on private property needed for a clear water removal project and site-specific permits from the local health department will cover the work done for an OSSS upgrade or replacement.

O. Submission of Plans and Specifications

A municipality/water supplier applying for loan assistance for a competitively-bid construction project, a CM project, or a D-B project will need to do the following:

1. Submit two sets of the draft design documents (plan sheets, specification books, and contract documents) to the MDEQ project manager in accordance with the executed project milestone schedule. In cases where mailing delays are likely, you may send one set of the draft documents directly to the appropriate MDEQ district office provided you notify your MDEQ project manager.
2. Revise the draft design documents to address all comments received from your MDEQ project manager and the MDEQ district staff.
3. Submit one set of the final design documents to the MDEQ project manager and at least three sets directly to the MDEQ district office, again in accordance with the executed project milestone schedule. Additional sets may be submitted to the district office in cases where a stamped, approved set of design documents is desired by parties other than the applicant municipality/water supplier (e.g., a copy for the municipality/water supplier's consulting engineer or, on a county-administered project, a copy for the local government's representative).

A municipality/water supplier applying for SWQIF loan assistance for an RFQ process project will need to do the following:

1. For a clear water removal project, submit one set of the generic plan sheets and specifications to the MDEQ project manager in accordance with the executed project milestone schedule.
2. For an OSSS project, submit all of the site specific permits issued by the local health department to the MDEQ project manager in accordance with the executed project milestone schedule.

P. Addenda to Approved Design Documents

In cases where a modification of the approved final design documents is found to be necessary, an addendum needs to be prepared for issuance to all prospective bidders. The addendum does not have to receive MDEQ approval prior to its issuance; however, as soon as one has been prepared, the municipality/water supplier must submit three sets of each addendum to the MDEQ project manager for review and approval.

If the MDEQ staff can approve the addendum, the project manager will send a stamped, approved copy of the addendum to the municipality/water supplier. If the MDEQ staff cannot approve the addendum, the project manager will work with the municipality/water supplier's design engineer to correct all deficiencies so that a revised addendum can be issued. If the time remaining before the opening of bids does not permit the issuance of a revised addendum to all prospective

bidders, then either the bid opening must be delayed or the required corrections must be made by means of a change order issued after the contract has been awarded.

Q. Mailing Addresses

Items sent through the U.S. Postal Service, such as notifications of owner's intent, should be sent to your MDEQ project manager at the following address:

Revolving Loan and Operator Certification Section
Water Bureau
Department of Environmental Quality
P.O. Box 30273
Lansing, MI 48909-7957

Bulky items sent through a parcel delivery service, such as plan sheets and books of contract documents or specifications, should be sent to your MDEQ project manager at the following address:

Revolving Loan and Operator Certification Section
Water Bureau
Department of Environmental Quality
Constitution Hall 3 South
525 West Allegan Street
Lansing, MI 48933

Attachment 1

**Clean Water and Drinking Water Revolving Loan Funds Disadvantaged
Business Enterprise Guidance**

Michigan Department of Environmental Quality
Clean Water and Drinking Water Revolving Loan Funds
Disadvantaged Business Enterprise Guidance

The U.S. Environmental Protection Agency has created the Disadvantaged Business Enterprise (DBE) program to increase the participation of small, minority and women owned firms in the procurement process for goods and services as required by rule, 40 CFR Part 33. This rule removes all of EPA's current Minority-owned Business Enterprise (MBE) and Women-owned Business Enterprise (WBE) fair share objectives and good faith efforts and replaces them with DBE provisions. DBEs are entities that include minority and women owned businesses, small business enterprises, a small business in a rural area, a labor surplus area firm and a historically underutilized business. There are substantive changes made by the DBE rule. The changes include certification requirement for minority and women owned businesses, Good Faith Efforts, a bidders list and contract administration requirements. The DBE program requires information on the participation of minority and women owned businesses be reported to EPA.

The Michigan Department of Environmental Quality (MDEQ), a recipient of EPA's capitalization grant for the Clean Water and Drinking Water Revolving Loan Funds, must comply with the EPA rule that recipients award a fair share of sub-agreements to minority and women owned businesses. This policy applies to all sub-agreements for equipment, supplies, construction and services. In order to be counted towards a recipient's fair share goal for MBE and WBE participation, the MBE and WBE firm must be certified. Non-certified MBE and WBE firms may be used by loan recipients for their procurement needs; however, the non-certified firms cannot be counted toward the MBE and WBE fair share goal accomplishment.

Certification

EPA policy states that DBEs must be certified by a recognized and approved agency. A business enterprise can no longer self certify that the business is disadvantaged. Certifications will be accepted from the following:

- Michigan Department of Transportation (www.michigan.gov/mdotdbe)
- Suburban Mobility Authority for Regional Transportation (www.smartbus.org)
- U.S. Small Business Administration (www.sba.gov)
- U.S. Department of Transportation (www.dot.gov)
- Tribal, state and local governments, as long as their standards for certification meet or exceed the standards in EPA policy

The EPA certification requirements include:

- An entity must establish that it is at least 51% owned and controlled by socially and economically disadvantaged individuals who are of good character and are citizens of the United States.
- An individual claiming economic disadvantaged status must have an initial and continued personal net worth less than \$750,000.

How to locate certified DBEs

The Michigan Department of Transportation has a directory of all Michigan certified entities located at this website <http://mdot270.state.mi.us:8080/UCP/HomePageServlet>. A searchable database of Michigan certified entities is also available on the website.

The Central Contractor Registration (CCR) database (www.ccr.gov) is another place to locate certified DBEs. CCR is an online business portal maintained by the federal government that helps small businesses market their goods and services to prime contractors. The database will allow searches by the North American Industry Classification System (NAICS) code (i.e. water and sewer line and related structures construction –NAICS code 237110) and other criteria.

Six Good Faith Efforts

The good faith efforts are activities by a loan recipient **AND** its prime contractor(s) to increase DBE awareness of procurement opportunities. The Six Good Faith Efforts are:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent possible via outreach and recruitment activities. This includes placing DBEs on solicitation lists and soliciting the DBEs 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, where possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This includes dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one DBE firm to handle individually.
5. Use the services and assistance of the Small Business Administration and Minority Business Development Agency of the U.S. Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in items 1 through 5 above.

A loan recipient is required to make the good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, even if it has achieved its fair share objectives. Records documenting compliance with the Six Good Faith efforts must be retained by the loan recipient and its prime contractor(s).

Bidders List Requirement

The purpose of a bidders list is to provide the loan recipients who conduct competitive bidding with an accurate database as possible about potential MBE/WBE and non-MBE/WBE contractors. The loan recipient must create and maintain a bidders list, if the loan recipient is subject to, or chooses to follow, competitive bidding requirements. The bidders list must include

all firms that bid or quote on contracts for EPA assisted projects. The bidders list must be kept until the project period for the identified loan has ended.

The bidders list will contain the following information:

1. Entity name and contact person
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

The bidder list requirement applies to all loan recipients receiving more than \$250,000 in any one fiscal year.

Contract Administration Requirements

The EPA rule is intended to prevent 'bait and switch' tactics at the subcontractor level by prime contractors. The rule includes the following provisions:

1. A loan 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 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.
5. The loan recipient must require its prime contractor to provide EPA Form 6100-2, DBE Program Subcontractor Participation Form to all of its DBE subcontractors. 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. DBE subcontractors should send the completed EPA Form 6100-02 directly to the EPA, Region 5 DBE coordinator:

Region 5 MBE/WBE Coordinator
USEPA, Acquisition and Assistance Branch
77 West Jackson Boulevard (MC-10J)
Chicago, IL 60604

6. The loan recipient must require its prime contractor to provide 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 contractor. The prime contractor must include all completed forms as part of the prime contractor's bid or proposal package to the loan recipient.

7. The loan recipient must require its prime contractor to provide EPA Form 6100-4, DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package to the loan recipient. This form captures the prime contractor's intended use of an identified DBE subcontractor and the estimated dollar amount of the subcontract.

Copies of the 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 are available at <http://www.epa.gov/osdbu/grants.htm>.

Michigan Department of Environmental Quality (MDEQ) Responsibilities

DBE program requirements apply to the MDEQ, as the recipient of the federal funds, **AND** then the MDEQ's loan recipients and prime contractors. Twice a year, the MDEQ must report on the participation of certified MBE and WBE for the clean water and drinking water programs. Semiannual reports are due to EPA within 30 days of the end of the semiannual reporting period (April 30th and October 30th). MBE/WBE data request forms are mailed to loan recipients in March and September. The semiannual reports will be completed with data submitted by the loan recipients to the MDEQ. The MBE/WBE firms reported by the loan recipients will be verified for certification.

Revolving Loan Recipient Responsibilities

Submit MBE and WBE participation data relating to procurement for goods and services related to the revolving loan project to the MDEQ.

Maintain a bidders list of MBE and WBE for future competitive procurements.

Submit a copy of the DBE certification letter with the MBE/WBE data request form to the MDEQ.

Incorporate the standard language in contract documents (see Standard Contract Language for Disadvantaged Business Enterprises) to make the following assurances:

- Prime contractor pays subcontractor within 30 days of prime contractor getting paid.
- Prime contractor notifies loan recipient in writing prior to terminating DBE subcontractor.
- Prime contractor uses Six Good Faith Efforts.
- Provide 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 to all contractors.

Contractor Responsibilities

Obtain DBE certification, if necessary.

Complete EPA Form 6100-4, DBE Program Subcontractor Utilization Form as part of the bid or proposal package to the loan recipient.

Provide EPA Form 6100-2, DBE Program Subcontractor Participation Form and EPA Form 6100-3 to subcontractors, if any.

Pay subcontractor, if any, within 30 days of receipt from loan recipient.

Notify loan recipient, in writing, prior to terminating DBE subcontractor.

Use Six Good Faith Efforts.

Incorporate the standard DBE language in contract documents.

Attachment 2

Disadvantaged Business Enterprise (DBE) Requirements Frequently Asked Questions Regarding Contractor Compliance

Disadvantaged Business Enterprise (DBE) Requirements Frequently Asked Questions Regarding Contractor Compliance

Q: What is the 6100-3 form and how is it to be completed?

A: This form is a DBE Subcontractor Performance Form and captures an intended DBE subcontractor's description of work to be performed for the prime contractor and the price of the work. This form is to be provided by the prime contractor to each DBE subcontractor for completion and requires signatures from both the prime and the sub. **Only DBE subcontractors are required to complete this form.**

Q: Can non-certified DBEs be used?

A: While non-certified DBEs can be used, only DBEs, MBEs, and WBEs that are certified by EPA, SBA, or MDOT (or by tribal, state and local governments, as long as their standards for certification meet or exceed the standards in EPA policy) can be counted toward the fair share goal. Proof of certification by one of these recognized and approved agencies should be sought from each DBE.

Q: How does a DBE get certified?

A: Applications for certification under MDOT can be found at <http://mdot270.state.mi.us:8080/UCP/FormsServlet>.

Applications for certification under EPA can be found on EPA's Small Business Programs website at <http://www.epa.gov/osbp/grants.htm> under Certification Forms.

Q: What is the 6100-4 form and how is it to be completed?

A: This form is a DBE Subcontractor Utilization Form and captures the prime contractor's intended use of an identified DBE subcontractor and estimated dollar amount of the work. This form is to be completed by the prime contractor by listing each subcontract, the intended subcontractor, and whether the firm is a certified DBE. **It is important that this form contain a complete listing of all subcontracts including non DBEs.**

Q: Must the 6100-3 and 6100-4 forms be turned in with the bid proposals?

A: Yes. This is a requirement to document that the contractor has complied with the DBE requirements and the six good faith efforts. These compliance efforts must be done during the bidding phase and not after-the-fact. It is highly recommended that the need for these efforts and the submittal of the forms with the bid proposals be emphasized at the pre-bid meetings. Owners should also be instructing prospective bidders that documentation of good faith efforts must be available and provided upon request.

Q: What kinds of documentation should a contractor have available to document solicitation efforts?

A: Documentation can include: fax confirmation sheets, copies of solicitation letters/e-mails, printouts of online solicitations, printouts of online search results, affidavits of publication in newspapers, etc.

Q: How much time will compliance with the good faith efforts require in terms of structuring an adequate bidding period?

A: Due to the extent of the efforts required, a minimum of 30 calendar days is recommended between bid posting and bid opening to ensure adequate time for contractors to locate certified DBEs and solicit quotes.

Q: How does a contractor locate certified DBEs?

A: The Michigan Department of Transportation has a directory of all Michigan certified entities located at <http://mdot270.state.mi.us:8080/UCP/HomePageServlet>. Additionally, the Central Contractor Registration (CCR) database is another place to search and can be found at www.ccr.gov

Q: If the bidder does not intend to subcontract any work, what forms, if any, must be provided with the bid proposal?

A: The bidder should complete the 6100-4 form with a notation that no subcontracting will be done. However, if the bidder is awarded the contract and then decides to subcontract work at any point, then the good faith efforts must be made to solicit DBEs.

Q: In the perfect world, forms are required to be turned in with the proposal. What if no forms are turned in with the bid proposal or forms are blank or incomplete? Should this be cause to determine that the bidder is non-responsive?

A: While the forms are important, it is more critical to confirm that the contractor complied with the DBE requirements prior to bid opening. The owner should contact the bidder as soon as deficiencies are noted for a determination/documentation of efforts taken to comply with the DBE requirements. Immediate submittal of the completed forms will be acceptable provided the good faith efforts were made and it is just a matter of transferring information to the forms.

Q: What if no DBEs provided quotes but there is subcontracted work?

A: The owner will need to follow up with the bidder for documentation of good faith efforts. The bottom line is that the owner cannot award a contract to a bidder that has not complied with the DBE requirements.

Q: What if the 6100-3 forms are completed by DBE subcontractors but the 6100-4 form shows no intent to award contract work to a DBE?

A: While the bidder is not required to award to a DBE, the owner needs to follow up with the bidder to identify the rationale for the selection of a non-DBE firm (i.e. price; ability to perform the work, etc.).

Q: If the prime contractor is a DBE, does he have to solicit DBE subcontractors?

A: Yes, the DBE requirements still apply if the prime intends to subcontract work out. Good Faith efforts must be used to solicit DBEs.