

**Water Infrastructure  
Finance Authority**

**Disadvantaged Business  
Enterprise Utilization**

**Guidance to Borrowers  
and Contractors**

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**Section 1: Overview**

The Water Infrastructure Finance Authority (WIFA) requires a borrower and their contractors to make good faith efforts to utilize businesses classified as Disadvantaged Business Enterprises (DBEs) for goods and services associated with WIFA 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: DBE Participation Goals**

For WIFA financed projects, a borrower and their contractors must make a good faith effort to meet the following DBE Participation Goals:

<b>Good or Service</b>	<b>MBE Participation Goal</b>	<b>WBE Participation Goal</b>
Construction	8%	10%
Equipment	9%	12%
Materials/Supplies	11%	15%
Services	14%	19%

The DBE Participation Goals are not quotas – WIFA will not penalize a borrower and their contractors if they cannot meet the goals. However, WIFA will require a borrower and their contractors to make a good faith effort to meet these goals and, as necessary, WIFA will compel compliance in accordance with the borrower’s agreement with WIFA.

**Section 4: Good Faith Effort for DBE Participation**

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

1. Identify DBEs through the sources listed in Appendix A.
2. Include qualified DBEs on solicitation/bid lists.
3. When feasible, divide project requirements into smaller tasks or quantities.
4. When feasible, set delivery schedules to enable participation by small businesses and DBEs.
5. Encourage the joint submission of bids by multiple businesses.
6. Include the contract conditions detailed in Appendix B in all solicitations and contracts.
7. Post solicitations for at least 30 days prior to the bid or proposal closing date.
8. When feasible, conduct pre-bid meetings, conference calls, or website based forums to inform all potential bidders about DBE participation.

**Section 5: DBE Participation Reporting Requirements**

WIFA requires the reports summarized in the table below and as more fully detailed after the table.

Report	Provided By:	Completed By:	Submitted To:	Appendix
DBE Report	WIFA	Borrower	WIFA	C
Form 6100-4	Borrower	Prime Contractor	Borrower	D
Form 6100-3	Prime Contractor	Sub-Contractor	Borrower	E
Form 6100-2	Prime Contractor	Sub-Contractor	EPA, Region 9	F

- DBE Report** – WIFA requires a borrower to report DBE participation on page 3 of each loan disbursement requisition submitted to WIFA. WIFA provides loan disbursement requisitions to a borrower after the borrower executes a WIFA financial assistance agreement. The borrower submits loan disbursement requisitions to WIFA after costs have been incurred which are subject to payment or reimbursement.
- Form 6100-4 – DBE Subcontractor Utilization** – The borrower must require potential prime contractors to submit Form 6100-4 as part of bid proposals to the borrower. The potential prime contractors identify potential DBEs and the estimated dollar amount of subcontracts.
- Form 6100-3 – DBE Subcontractor Performance** – The prime contractor must require potential subcontractors to submit Form 6100-3 as part of bid proposals.
- Form 6100-2 – DBE Subcontractor Participation** – The prime contractor must provide subcontractors the opportunity to 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

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**Appendix A**

**Sources to Identify and Certify DBEs**

<b>Source</b>	<b>Phone</b>	<b>Website/E-Mail</b>
Arizona Department of Transportation Civil Rights Office	(602) 712-7761	<a href="http://www.azdot.gov/azdbe">www.azdot.gov/azdbe</a>
Department of Commerce Minority Business Development Administration		<a href="http://www.sba.gov/businessop/findop/matchmaking">www.sba.gov/businessop/ findop/matchmaking</a>
Department of Defense Central Contractor Registration	(888) 227-2433	<a href="http://www.ccr.gov">www.ccr.gov</a> Select "Dynamic Small Business"
Environmental Protection Agency Office of Small, Disadvantaged Business Utilization		<a href="http://www.epa.gov/osdbu">www.epa.gov/osdbu</a> Select "Search OSDBU Registry"
Environmental Protection Agency Region 9, DBE/MBE/WBE Coordinator	(415) 972-3761	<a href="mailto:Ochab.joe@epamail.epa.gov">Ochab.joe@epamail.epa.gov</a>
Hispanic Chamber of Commerce		<a href="http://www.usfcc.com">www.usfcc.com</a>
National Association of Minority Contractors	(202) 347-8250	<a href="http://www.namcline.com">www.namcline.com</a>
National Association of Women in Construction	(800) 552-3506	<a href="http://www.nawic.org">www.nawic.org</a>
National Association of Women's Business Owners	(703) 506-3268	<a href="http://www.nawbo.org">www.nawbo.org</a>
National Black Chamber of Commerce	(202) 466-6888	<a href="http://www.nationalbcc.org">www.nationalbcc.org</a>
National Minority Supplier Development Council	(212) 944-2430	<a href="http://www.nmsdcus.org">www.nmsdcus.org</a>
UIDA Business Services (Native American)	(770) 494-0431	<a href="http://www.uida.org">www.uida.org</a>

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**Appendix B**

**DBE Solicitation and Contract Conditions**

The DBE Solicitation and Contract Conditions shown on the following four (4) pages must be physically included in all bidding and contract documents for WIFA financed projects.

**Water Infrastructure Finance Authority of Arizona  
Disadvantaged Business Enterprise (DBE) Solicitation and Contract Conditions**

**DBE Related Laws, Rules, and Regulations**

This project is being financed in whole or in part by the Water Infrastructure Finance Authority of Arizona (WIFA). 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. 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, ensures access to facilities or programs regardless of race, color, national origin, sex, age or handicap.
2. Executive Orders 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 over \$10,000.
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 U.S.C. 437d); a 1993 appropriations act (“EPA’s 8% statute”); Public Law 101-549, Title X of the Clean Air Acts Amendments of 1990 (42 U.S.C. 7601 note) (“EPA’s 10% statute”). Encourages recipients 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.
4. 40 CFR Part 33 Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements
5. Executive Order 12549, 3 CFR, 189 and 40 CFR Part 32, Subparts B and C. Prohibits entering into contracts or sub-contracts 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/>.

**Equal Employment**

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

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 advertisements 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 worker's 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 all 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 Sept. 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 Sept. 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 Sept. 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.

<b>Good or Service</b>	<b>MBE Participation Goal</b>	<b>WBE Participation Goal</b>
Construction	8%	10%
Equipment	9%	12%
Materials/Supplies	11%	15%
Services	14%	19%

### **Good Faith Effort for DBE Participation**

Borrowers and their contractors and subcontractors must make a good faith effort to enable DBE participation through, at a minimum, the following actions:

1. Identify DBEs.
2. Include qualified DBEs on solicitation/bid lists.
3. When feasible, divide project requirements into smaller tasks or quantities.
4. When feasible, set delivery schedules to enable participation by small businesses and DBEs.
5. Encourage the joint submission of bids by multiple businesses.
6. Include the “DBE Contract Conditions” in all solicitations and contracts.
7. Post solicitations for at least 30 days prior to the bid or proposal closing date.
8. When feasible, conduct pre-bid meetings, conference calls, or website based forums to inform all potential bidders about DBE participation.

### **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 WIFA 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 notify the loan recipient in writing prior to the termination of any DBE subcontractor for convenience by the prime contractor.
3. If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the “Good Faith Efforts for DBE Participation” if soliciting a replacement subcontractor.
4. The prime contractor must employ the “Good Faith Efforts for DBE Participation” even if the prime contractor has achieved its fair share objectives.
5. The prime contractor must submit **Form 6100-4 – DBE Subcontractor Utilization** to the borrower as part of bid proposals.
6. 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.
7. 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

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.”**

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**Appendix C**

**DBE Report**

The borrower must report DBE participation when requesting loan draws on forms provided by WIFA as shown on the next page.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Report**

**Water Infrastructure Finance Authority Requisition 1, Page 3 of 4  
Disadvantaged Business Enterprise (DBE) Report**

«Borrower\_Name»

«Loan\_Number»

**DBE Reporting Requirements**

- A. Within Column A in the table below, list each contractor, subcontractor, or vendor that provided supplies, equipment, construction, or other goods or services related to this disbursement request.
- B. Within Column B, detail the amount paid or payable to each firm listed in Column A. The total for Column B must equal the total requested on page 2 of this request.
- C. Within Column C, insert one of the following Product/Service Codes for each firm listed in Column A:  
 3 = Construction    4 = Manufacturing    5 = Transportation    6 = Supplies & Equipment, Wholesale  
 7 = Supplies & Equipment, Retail    9a = Business Services    9b = Professionals Services  
 9c = Other Services    10 = Other/Misc
- D. If the firm listed in Column A is a Minority Business Enterprise (MBE), insert a checkmark within Column D. An MBE business is at least 51% owned by one or more minority individuals and whose daily business operations are managed and directed by one or more of the minority owners.
- E. If the firm listed in Column A is a Women-Owned Business Enterprise (WBE), insert a checkmark within Column E. A WBE business is at least 51% owned by one or more women and whose daily business operations are managed and directed by one or more the women owners.

<b>Disbursement Request by Contractor/Subcontractor/Vendor</b>				
<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>Contractor/Subcontractor/Vendor Name &amp; Address</b>	<b>\$ Amount</b>	<b>Product/ Service Code (See codes above)</b>	<b>MBE</b>	<b>WBE</b>
<b>Total of Column B must equal total requested on Page 2, Column 4 of this Requisition</b>				

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**Appendix D**

**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  
Form 6100-4 – DBE Subcontractor Utilization**

**To:** Borrower

**From:** Prime Contractor

<b>BID/PROPOSAL NO.</b>	<b>PROJECT NAME</b>
<b>NAME OF PRIME BIDDER/PROPOSER</b>	<b>E-MAIL ADDRESS</b>
<b>ADDRESS</b>	
<b>TELEPHONE NO.</b>	<b>FAX NO.</b>

<b>The following subcontractors will be used on this project:</b>			
<b>Company Name, Address, Phone Number, and E-Mail Address</b>	<b>Type of Work to be Performed</b>	<b>Estimated Dollar Amount</b>	<b>Current Certified as an MBE or WBE</b>
<p>I certify under penalty of perjury that the forgoing statements are true and correct. 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).</p>			
<p>_____ Signature of Prime Contractor</p>		<p>_____ Date</p>	
<p>_____ Print Name</p>		<p>_____ Title</p>	

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**Appendix E**

**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  
Form 6100-3 – DBE Subcontractor Performance**

**To:** Borrower and Prime Contractor

**From:** Subcontractor

<b>NAME OF SUBCONTRACTOR:</b>		<b>PROJECT NAME</b>
<b>ADDRESS</b>		<b>BID/PROPOSAL NO.</b>
<b>TELEPHONE NO.</b>		<b>E-MAIL ADDRESS</b>
<b>PRIME CONTRACTOR NAME</b>		
<b>CONTRACT ITEM NO.</b>	<b>ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME</b>	<b>PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR</b>
Currently certified as an MBE or WBE under EPA's DBE Program? _____ Yes _____ No		
_____ Signature of Prime Contractor		_____ Date
_____ Print Name		_____ Title

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**Appendix F**

**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  
Form 6100-2 – DBE Subcontractor Participation**

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

**From:** Subcontractor

<b>NAME OF SUBCONTRACTOR</b>	<b>PROJECT NAME</b>
<b>ADDRESS</b>	<b>CONTRACT NO.</b>
<b>TELEPHONE NO.</b>	<b>EMAIL ADDRESS</b>
<b>PRIME CONTRACTOR NAME</b>	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

<b>CONTRACT ITEM NO.</b>	<b>ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR</b>	<b>AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR</b>

  

_____	_____
Signature of Prime Contractor	Date
_____	_____
Print Name	Title