**VIRGINIA CLEAN WATER REVOLVING LOAN FUND**
**2014 CONTRACT INSERTS**
**FOR STORMWATER PROJECTS**

The following document is to be inserted "verbatim" in all construction contracts funded by the Virginia Clean Water Revolving Loan Fund. The contract insert contains ten subparts and nine attachments as follows:

1. Subpart A - containing the Federal/State Nondiscrimination Provisions for Equal Employment Opportunities applicable to all construction and service contracts.

2. Subpart B - containing the notice to the prime contractor relative to certification on nonsegregational facilities.

3. Subpart C - setting forth the affirmative action requirements for the contractors and subcontractors for work involving any construction trade in excess of $10,000.

4. Subpart D - containing the Civil Rights Act of 1964.

5. Subpart E - setting forth requirements of Age Discrimination of 1975, Rehabilitation Act of 1973, and Section 13 of PL 92-500, the Federal Water Pollution Control Act.

6. Subpart F - setting forth requirements under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act for contracts and subcontracts in excess of $100,000.

7. Subpart G - procurement of goods and materials from Small Businesses in Rural Areas of the Commonwealth of Virginia wherever practical and feasible.

8. Subpart H – provides that a contractor maintains a drug-free workplace or subcontractor during the performance of contract duties for any wastewater revolving loan-assisted project.

Attachment No. 1 – Instructions to Bidders/Offerers

Attachment No. 2 - Certification regarding EEO compliance

Attachment No. 3 - MBE/WBE Utilization Report

## SUBPART A

## EQUAL EMPLOYMENT OPPORTUNITY

1. Executive Order 11246 (Contracts/subcontracts above $10,000)

(a) During the performance of this contract, the contractor and all subcontractors agree 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 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 considerations 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 the other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, 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 11246 of September 24, 1965, and 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 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering 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 contractors' noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 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 portion of the sentence immediately preceding paragraph (1) and 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 11246 of September 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 the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## SUBPART B

## NOTICE TO PRIME CONTRACTOR OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

Bidders and offerors are cautioned as follows: By signing this bid or offer, the bidder or offeror will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this solicitation. The certification provides that the bidder or offeror does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de factor basis. The certification also provides that he will not maintain such segregated facilities.

## SUBPART C

## CONSTRUCTION CONTRACTORS AFFIRMATIVE ACTION REQUIREMENTS

1. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the affirmative action goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

2. The applicable Minority Business Enterprise (MBE)/Women's Business Enterprise (WBE) "fair share" goals and dollar objectives are established as follows:

| | MBE% | WBE% |
|---|---|---|
| Construction | 5.8 | 4.0 |
| Equipment | 4.1 | 4.2 |
| Services | 3.9 | 2.6 |
| Supplies | 1.5 | 1.6 |

3. The MBE/WBE goals set forth in this contract are shown in #2 above. The Contractor shall make every reasonable attempt to achieve the goals as stated. When so notified by the owner, the apparent low bidder shall provide a listing of MBE's and WBE's he proposes to use on this project. Should the bidder fail to meet the aforementioned objectives he shall provide complete documentation which demonstrates the positive efforts made. Failure to satisfy this requirement to the satisfaction of the owner shall constitute a nonresponsible bid and shall be cause for the owner to reject the bid.

4. The contractor shall implement the specific affirmative action steps as provided in Section B included in the Instruction to Bidders/Offerers section of these specifications.

5. The Contractor and all Subcontractors must maintain documentation and records of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations. Within 21 days of determination of the apparent low bidder, the contractor must furnish to the owner all pertinent documentation, which evidences or documents a good faith effort in MBE/WBE solicitation and projected utilization. Failure to comply with the submission of appropriate MBE/WBE documentation may result in the determination of a bidder as nonresponsible and shall cause the bid to be rejected.

6. Immediately following the award of contracts and continuing through the construction stage, all records of MBE/WBE utilization shall be maintained and reported in accordance with the Virginia Clean Water Revolving Loan Fund MBE/ WBE Utilization Reporting Form. A MBE/WBE Utilization Reporting Form shall be completed and submitted to the owner on a calendar year quarterly basis during the construction period.

## SUBPART D

## CIVIL RIGHTS ACT OF 1964

The Contractor and any subcontractors shall not, on the grounds of race, color, or national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination, any person under any program or activity receiving federal financial assistance.

## SUBPART E

## SECTION 13 of PL 92-500; UNDER THE FEDERAL WATER POLLUTION CONTROL ACT; REHABILITATION ACT OF 1973; PL 93-112, AND AGE DISCRIMINATION ACT OF 1975

The Contractor and any subcontractors shall not on the grounds of race, color, national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination any person under any program or activity funded in whole or in part with Federal funds. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

## SUBPART F

## COMPLIANCE WITH SECTION 306 OF THE CLEAN AIR ACT AND SECTION 508 OF THE CLEAN WATER ACT (CONTRACTS AND SUBCONTRACTS IN EXCESS OF $100,000)

The Contractor agrees that:

1. Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.

2. The Contractor and Subcontractors will comply with all requirements of Section 306 of the Clean Air Act, as amended, and Section 508 of the Clean Water Act, as amended, and all regulations and guidelines issued thereunder.

3. The Contractor will promptly notify the loan recipient and Department of Environmental Quality of any notification received from the Director of the Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

## SUBPART G

## UTILIZATION OF SMALL BUSINESSES IN RURAL AREAS

The contractor and its subcontractors shall maintain a small business solicitation list and make appropriate attempts to procure needed equipment, supplies, and material from small businesses in rural areas of the Commonwealth of Virginia whenever they are a practical source for solicitation.

## SUBPART H

## TITLE 2.2, SECTION 2.2-4312, to CHAPTER 43 RELATING TO THE PROCUREMENT PRACTICES OF ALL PUBLIC BODIES (DRUG-FREE WORKPLACE)

For every contract over $10,000, the contractor must maintain a drug-free workplace. During the performance of this contract, the contractor agrees to (I) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

ATTACHMENT #1

**Minority Business and Women's Business Enterprise (MBE/WBE) Requirements of 40 CFR 33.240**

Bidder/Offerer Responsibilities

A. Affirmative Steps: Activities during preparation of bids and offers. Bidders/offerers shall take affirmative steps in compliance with the regulations, prior to submission of bids or closing data for receipt of initial offers, to encourage participation in projects by MBE and WBE firms. Such efforts include:

1. Establish and maintain a current solicitation list of minority and female recruitment sources, and assure MBE and WBE firms are solicited once they are identified.

2. When feasible, segmenting total work requirements to permit maximum MBE/WBE participation and establish delivery schedules to encourage MBE/WBE participation.

3. Assuring that MBE and WBE firms are solicited whenever they are potential sources of goods and services. This step may include:

   a. Sending letters or making other personal contact with MBE and WBE firms, private agencies and state associations (e.g., whose names appear on lists prepared by EPA or the recipient and other MBE/WBE known to the bidder/offerer). MBE and WBE firms should be contacted when other potential subcontractors are contacted, within reasonable time prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:

   (i) Specific description of the work to be contracted;

   (ii) How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;

   (iii) Date the quotation is due to the bidder/offerer;

   (iv) Name, address, and phone number of the person in the bidder/offerer's firm whom the prospective MBE/WBE subcontractor should contact for additional information.

   b. Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprises of the U.S. Department of Commerce.

B. Bidders/offerers must demonstrate compliance with MBE/WBE requirements to be deemed responsible. Demonstration of compliance may include the following information; however, the recipient may specify other methods of demonstrating compliance:

   1. Names, addresses and phone numbers of MBE/WBE firms expected to perform work;

   2. Work to be performed by the MBE and WBE firms;

   3. Aggregate dollar amount of work to be performed by MBE and WBE firms, showing aggregate to MBE's and aggregate to WBE's separately;

4. Description of contacts to MBE and WBE organizations, agencies and associations which service MBE/WBE firms, including names of organizations, agencies and associations and dates of contacts;

5. Descriptions of contacts to MBE and WBE firms, including number of contacts, fields (i.e., equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and dates of contacts.

C. Successful bidders/offerers should take reasonable affirmative steps to subcontract with MBE and WBE firms whenever additional subcontracting opportunities arise during the performance of the contract.

ATTACHMENT #2

## BIDDER COMPLIANCE STATEMENT/CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

Applicability: Bid exceeding ten thousand dollars for construction contract/subcontract of unlimited amount and non-construction contract/subcontract of less than one million dollars.

This statement relates to a proposed contract between_____ and Public Body or
(contractor)

subcontract between_____and_____to be
(subcontractor) (contractor)

funded under a federally assisted project. Pursuant to Executive Order 11246 and its implementing regulations at 41 CFR 60-1.7(b) (1), as the undersigned bidder, I certify that:

1) Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

Yes No

2) Bidder has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR 60-2 (applies only to non-construction contractor).

Yes No

3) Bidder has filed with the Joint Reporting Committee, the Director (Office of Federal Contract Compliance Programs, U.S. Department of Labor), and agency, or the Equal Employment Opportunity Commission, all reports due under the applicable filing requirements.

Yes No

I understand that if I have failed to file any compliance reports which have been required of me, or have failed to develop and have on file at each establishment affirmative action programs pursuant to 41 CFR 60-2, when required, I am not eligible to have my bid or proposal considered, or to enter into the proposed contact.

I further understand that if awarded the proposed contract, and the contract for the FIRST time brings me under the filing requirements or the written affirmative action programs that I will, as applicable: (a) within 30 days file with the Public Body Standard Form 100 (EEO-1); and (b) within 120 days from the commencement of the contract develop and submit to the Director of OFCCP for approval a Written Affirmative Action Plan.

NAME AND ADDRESS OF BIDDER (Include ZIP Code):

NAME AND TITLE OF SIGNER (Please Type or Print):

SIGNATURE: DATE:

ATTACHMENT #3

## VIRGINIA CLEAN WATER REVOLVING LOAN FUND

## PART I - MBE/WBE UTILIZATION REPORTING

Send completed form to: Department of Environmental Quality
Clean Water Financing and Assistance Program
P.O. Box 1105, Richmond, Virginia 23218.
Reporting contact is Ken Savko; phone number is (804) 698-4141 - kenneth.savko@deq.virginia.gov
Fax Number (804) -698-4032

Year 20__

**Reporting Quarter: (check one)**

1st (Oct.-Dec.) ____ 2nd (Jan.-Mar.) ____
3rd (Apr.-Jun.) ____ 4th (Jul.-Sept.) ____

**Name of Loan Recipient**:

**VCWRLF Loan Recipient Project No.: C-515** _____

Prime Contractor:

Contract Number:

**Date for Start of Construction**:

Is the Prime Contractor an MBE or WBE? Yes No

Have you subcontracted with an MBE or WBE firm in this quarter?

Yes No

**Please sign and date below.**

And, if you answered yes to subcontracting with an MBE or WBE firm please provide information on Part II.

_____

**Contractor's Signature (or Recipient's signature if prime contractor is MBE\WBE firm)**

_____ _____ _____

**Date** **Fax Number** **Email Address**

If an MBE/WBE subcontract is rescinded, please give name of firm, date of rescission and amount of rescission.

_____

## PART II - MBE/WBE UTILIZATION REPORTING

Project No. **C-515** _____ Year_____ Quarter____

| Business Enterprise | | Dollar Value of Procurement | Date of Award (mm/dd/yy) | Type of Product or Service[1] | Name and Address of MBE/WBE Contractor or Vendor |
|---|---|---|---|---|---|
| Minority | Women | | | | |
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[1] Type of product or use service code below:

1=Agriculture
2=Mining
3=Construction
4=Manufacturing

5=Transportation
6=Wholesale Trade
7=Retail Trade
8=Finance, Insurance, Real Estate

9=Services
a=Business Services
b=Professional Services
c=Repair Services
d=Personal Services

10=Other