AMENDMENTS TO
VIRGINIA'S WASTEWATER REVOLVING LOAN FUND PROJECTS
"PROCEDURAL GUIDELINES"
DATED FEBRUARY 2004

FOR PROJECTS FUNDED IN PART OR IN WHOLE BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

This document revises the Virginia Wastewater Revolving Loan Fund Procedural Guidelines dated February 2004. The revisions amend five existing sections, add two new sections, and delete three sections entirely. The revisions are to help loan recipients comply with the American Recovery and Reinvestment Act of 2009 (ARRA). These amendments are only applicable to projects using ARRA funds administered by the Department of Environmental Quality's Construction Assistance Program.

GENERAL OVERVIEW

Page iii - Disregard references to I/I Certification (Certification will not be required for ARRA funded projects)
- Disregard references to Virginia Department of Health (VDH). Regulations have been amended to give DEQ the sole plans and specification review responsibility for sewerage systems and wastewater treatment plants
- Disregard references to Bond Counsel. No bond counsel statement is required
- Disregard references to Value Engineering requirements

Page iv - Disregard references to Sewer Use Ordinance (SUO), Initiation of Operation (IO), and Performance Certification (these requirements are not applicable to ARRA funded projects)

Section 1 – ALLOWABILITY OF EXPENSES – No Change

Section 2 – FUND DISBURSEMENT AND LOAN PAYMENT

Page 2-1 - Change DEQ address to 629 Main Street, Richmond, Virginia 23219 for overnight or hand delivery, and PO Box 1105, Richmond, Virginia 23218 for regular delivery

Page 2-2 – Additional documentation to support concurrence and mandatory reporting under special provisions of the ARRA may be added to disbursement requests as needed by DEQ
- Disregard references to Sewer Use Ordinance (SUO) as a condition of payments beyond 95% of the loan. An <u>approvable</u> O&M Manual must be submitted for pump stations and wastewater treatment plants (but not necessarily approved) prior to disbursements beyond 95% of the loan as determined appropriate by the Construction Assistance Program

Page 2-3 - Change DEQ address as noted above
Change VRA contact to Dr. Sheryl Bailey, Suite 1920, 1111 E. Main Street, Richmond, Virginia 23218

Exhibit E – Note address corrections above

Section 3 – FINANCIAL MANAGEMENT – No Change

Section 4 – PROCUREMENT

Page 4-4 – The Bid package submittal must include: the loan recipient's documentation of compliance with the loan recipient satisfaction of DBE requirements in Section 9 for selection of the prime contractor; and documentation of the prime contractor's satisfaction of DBE requirements in Section 9 for solicitation of subcontractors; and include the prime contractor's Buy American Certification

Section 5 – USE OF EQUIPMENT /PURCHASE OF MATERIALS – No Change

Section 6 – FILING AND RECORD KEEPING

Page 6-5 - Add a file for Buy American Certification and other information
- Add a payroll and payroll review file for Davis Bacon compliance
- Add a file for documentation of DBE solicitation efforts

Section 7 – PRELIMINARY ENGINEERING AND ENVIRONMENTAL REVIEW

Page 7-1 – Insert "Sewage Collection and Treatment (SCAT) regulations" in place of "Virginia Sewerage Regulations"

Page 7-1 - A Preliminary Engineering Proposal is not required unless required by other funding programs, however, an environmental review and approval is required

Page 7-5 - Disregard reference Virginia Department of Health

Page 7-5 - Disregard reference Virginia Department of Health

Section 8 – INFILTRATION/INFLOW CERTIFICATION - Deleted Entirely

Section 9 – *AFFIRMATIVE ACTION AND NONDISCRIMINATION PROVISIONS – Replace entirely*

Section 10 – PRECONSTRUCTION CONFERENCE - – No Change

Section 11 - STATE CONSTRUCTION OVERSIGHT – No Change

Section 12 – SEWER USE ORDINANCE - Deleted Entirely

Section 13 – PERFORMANCE CERTIFICATION - Deleted Entirely

Section 14 - *BUY AMERICAN (SECTION 1605 OF ARRA) - New*

Section 15 - *PAYROLL REVIEW (DAVIS-BACON ACT COMPLIANCE) - New*

Amended # 9
Loan Program Guidance Package

AFFIRMATIVE ACTION AND NONDISCRIMINATION PROVISIONS

This section is being amended to incorporate the new Federal Affirmative Action language contained in EPA Regulations promulgated May 27, 2008 referred to generally as "EPA DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM". ARRA funded projects must comply with these standards.

Applicability

This requirement applies the new Federal rules for affirmative action to any procurement actions funded in part or in whole by the ARRA. These regulations apply to both the loan recipient's solicitation of the prime contractor and the prime contractor's solicitation of subcontractors. Subcontractors mean construction contractors, equipment or materials suppliers, and/or service providers for subcontracts over $10,000.

The new program requires that both the loan recipient and prime contractor actively solicit DBE contractors and document those efforts. DBE includes MBE, WBE, Small Businesses, and Small Businesses in Rural Areas. Previously only the prime contractor was required to follow OMBs affirmative action steps (below) in soliciting subcontractors. The prime contractor had to follow the affirmative action steps and submit evidence of that effort. **The new standard requires that the loan recipient actively solicit DBE prime contractors and document those efforts as well.**

DBE Procurement Requirements

The citation DBE has been used in recent federal requirements to include MBE, WBE, Small Businesses, and Small Businesses in Rural Areas. Some forms or instructions may contain either citation or both. Contract solicitation efforts apply to all types of DBE firms. Goals and quarterly reports apply only to MBE and WBE firms.

The loan recipient and prime contractor must document compliance with the affirmative action steps listed below. The affirmative action steps are also included in the "Contract Inserts" required to be included in the project contract specifications.

a. Ensure awareness of contracting opportunities to fullest extent PRACTICABLE, including placing DBEs on solicitation lists;

b. Make information on forthcoming opportunities available to DBEs. Adjust time frames and delivery schedules to encourage participation by DBEs. Allow reasonable time in the solicitation process for DBE subcontractors to provide an appropriate response before the closing date for proposals or bids;

c. Divide total requirements when ECONOMICALLY FEASIBLE to permit maximum DBE participation;

d. Encourage DBE consortiums for large contracts;

e. Use Small Business Administration (SBA) and Minority Business Development Agency (MBDA) offices to obtain lists of DBE firms.

It is recommended that the loan recipient and contractor(s) utilize the services of Virginia Department of Minority Enterprises (DMBE) (www.dmbe.virginia.gov). Other internet resources may also be used such as the Department of Transportation (http://www.virginiadot.org/business/bu_bizDev.asp) or the federal Central Contractor Registry (CCR) at www.ccr.gov . The loan recipient and contractor(s) must develop a list of certified DBEs in the geographic area of the project for inclusion in the bidding process and directly contact all that may reasonably have an interest in the project. Websites or other listings should be searched for the type of work or services to be utilized and that list used to call, email, or mail potential DBEs information on the project and the bidding schedule. A detailed list of the results must be maintained documenting the initial search, actual contacts, and any responses. Only qualified low bidders have to be considered for contract or subcontract award. Even though there are goals, there is no DBE hiring quota. Newspaper advertisements are useful but do not by themselves satisfy this requirement.

The Virginia Department of Health's (VDH) Drinking Water Revolving Loan Fund Program has been following these new guidelines for some time and has developed excellent instructions for locating DBEs. For the purposes of this guidance, the DEQs instructions duplicate VDH instructions used in their DWSRF program. DEQs Construction Assistance Program can be substituted anywhere that VDH is cited. Addresses and contacts for DEQ Construction Assistance Program should be substituted for any VDH addresses or contact citations. Excerpts from VDH's Procedural Guidelines are included as attachment 9-1. VDH also developed a "Toolkit" (Attachment 9-2) further explaining processes to comply with these requirements.

Attachment 9-3 is a listing of National Institute of Governmental Purchasing (NIGP) codes used most often for water and wastewater infrastructure construction projects. The North American Industrial Classification System (NAICS) codes (formerly SIC codes) can also be used. There is a link on the DMBE website to search NAICS contractors. As an example, Category 23 generally refers to construction. Category 237 is for heavy construction. This listing will locate all construction contractors of this type in the database. The list will have to be manually reduced to eliminate inappropriate construction types or contractors outside of a reasonable geographic distance from the project. The original search lists and reduced contact list should be maintained for submittal with the documentation package.

Two Special Notes: DBE prime contractors must also demonstrate their efforts to contact DBE subcontractors for any subcontracts exceeding $10,000.

Satisfaction of the State goals listed below does not eliminate or reduce the requirement to make a complete and through solicitation effort of area DBEs and document that effort.

Within 30 days of determination of the apparent, qualified, low bidder, the loan recipient will be required to submit a bid package including documentation of their efforts to address a. through e. above and the prime contractor's efforts to solicit DBE subcontractors. The Procurement Section (#4) lists additional items that must be included in bid package.

Failure by the loan recipient to comply with the submission of appropriate DBE documentation for solicitation of the prime contractor may void the bid procurement. Failure of the apparent low bidder to satisfy these requirements may result in a determination that the bidder is "nonresponsive" and shall be cause for that bid to be rejected. The owner may select the second bidder for review and submittal of required documentation in such case.

Prime Contractor Requirements

As noted, the prime contractor must submit their DBE solicitation documentation above to the loan recipient within 21 days of determination of the apparent, low bidder. The prime contractor bid documentation must include a completed EPA Form number 6100-4 plus an EPA Form number 6100-3 for each DBE subcontractor used in the contractor's bid. ***Forms 6100-2, 6100-3, and 6100-4 are included as attachment 4 to the ARRA contract inserts.***

Whenever the Prime Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, they shall physically include in each subcontract in excess of $10,000 the DBE provisions of the "ARRA Contract Inserts".

The prime contractor must also supply an EPA Form number 6100-2 – *Program Subcontractor Participation Form* to each MBE or WBE subcontractor for there use. The subcontractor is not required to submit the 6100-2 but must be provided the Form for their use.

The new regulations require the prime contractor pay subcontractors for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.

The prime contractor must notify the loan recipient in writing **prior to termination of an MBE or WBE subcontractor**. When a subcontractor is replaced, the prime contractor must employ the good faith efforts above to find a replacement but is not required to hire another DBE subcontractor.

Subcontractor Requirements

Any subcontractor may submit EPA Form 6100-2 – *DBE Subcontractor Participation Form* to EPA with concerns or complaints. Forms should be submitted directly to Romona McQueen, EPA Region 3 DBE Coordinator.

MBE/WBE Certification

In order for a firm to be counted towards a recipient or prime contractor's MBE and WBE utilization efforts, they must **be certified by EPA or another acceptable certifying agency.** EPA and DEQ also recognize the certifications of the Small Business Administration, the federal Department of Transportation, and certification programs administered by state and local governments or other federal agencies as long as their standards for certification meet or exceed EPA Standards. **In Virginia, the Virginia Department of Minority Business Enterprise (DMBE), and the Virginia Department of Transportation (VDOT) maintain online searchable databases for locating certified MBE/WBE firms.**

Fair/Share Goals

Virginia "fair share" goals and dollar objectives for MBE and WBE contractors are displayed below. There are no specific goals for other classifications of DBE contractors. The Contractor shall make a good faith effort to achieve the goals as stated and maintain all supporting documentation as described above.

	MBE%	WBE%
Construction	1.7	0.8
Equipment	0.4	0.5
Services	1.3	0.6
Supplies	0.8	0.5

Solicitation Documentation

There is no set form or package to document efforts. The documentation must include:

1. An explanation of the search effort and should include a list of firms found.
2. A copy of solicitation letters or emails sent and any responses received.
3. Descriptions (including dates) of other contacts such as telephone calls made to solicit DBE firms.
4. A copy of newspaper advertisements if applicable.
5. A copy of advertisements that ran in publications that target MBE/WBE businesses if applicable.
6. Written descriptions of any special efforts made to enhance MBE/WBE participation such as reducing the size or quantity of services or goods to be provided in order to maximize bidding opportunities for MBE/WBE firms.

* Verification of MBE or WBE certifications must be supplied if requested by the loan recipient, DEQ, or EPA.

MBE/WBE Reporting

The loan recipient must submit amended Virginia Clean Water Revolving Loan Fund MBE/WBE Utilization Reporting Form ("ARRA Contract Inserts Attachment 3) each calendar quarter. Reports are expected no later than two weeks after the end of the quarter. A MBE/WBE Utilization Reporting Form shall be completed and submitted to the loan recipient by the prime contractor or prime contractors (if multiple contracts are awarded) immediately at the end of each quarter. The loan recipient is responsible for filing a MBE/WBE Utilization Reporting Form every quarter for the entire project.

The first quarterly report should include the procurement of the prime contractor and any subcontracting done by the prime contractor. Subsequent quarterly reports will include any further MBE or WBE contracting by the loan recipient or prime contractor(s) whether for additional construction, equipment, or services. The Utilization Reporting Form should be submitted **by the loan recipient** to the Construction Assistance Program on a calendar year quarterly basis during the construction period at the following address:

Construction Assistance Program
Attention: Deborah Hawkins
Department of Environmental Quality
PO Box 1105
629 East Main Street
Richmond Virginia 23218

(Forms may be faxed to Deborah Hawkins at 804-698-4032)

Utilization Reports should be submitted within two weeks of the end of the quarter. Failure to submit the required reports or submittal of incomplete reports may delay loan reimbursement requests.

Nondiscrimination Provisions

The loan recipient shall maintain records of all executed nondiscrimination (EEO Compliance) certifications filed.

#14
Loan Program Guidance Package

BUY AMERICAN
(Section 1605 of ARRA)

Application

Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA) requires that each locality that receives ARRA financial assistance in whole or in part use only American-made iron, steel, and manufactured goods in their construction project. In order to fulfill this requirement, the loan recipient must design the project and solicit bids with VCWRLF ARRA Contract Inserts. The inserts reiterate the requirement to use American-made iron, steel, and manufactured goods. It is the responsibility of the loan recipient and the design engineer to determine as much as practical before the project is bid that all named components are American made. Unnamed or generally specified components should be researched as much as possible to eliminate problems in compliance with this requirement. Furthermore, the prime contractor(s) must supply the Buy American Certification included as Attachment 5 in the ARRA Contract Inserts before award of a contract.

A "project" consists of all construction necessary to complete the building or work regardless of the number of contracts and assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time, and place. This definition is intended to prevent the intentional splitting of ARRA projects into separate and smaller contracts or assistance agreements to avoid Buy American coverage on some portion of a larger project, particularly where the activities are integrally and proximately related to the whole. Any concerns of the applicability of this provision should be brought to the addition of the Construction Assistance Program immediately.

Definitions from OMB guidance of April 3, 2009, at 176.70 (a) (2) (ii) and 176.140 (a):

Steel: An alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Production in the United States of the iron or steel used in the project requires that all manufacturing must take place in the United States except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

Manufactured Goods: "Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been –

(1) Processed into a specific form and shape; or
(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Reasonably Available Quantity: The quantity of iron, steel, or the relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

Satisfactory Quality: The quality of iron, steel, or the relevant manufactured good as specified in the project plans and design.

Assistance Recipient: A borrower or grantee that receives funding from a state CWSRF or DWSRF program.

Certification

The prime contractor must certify that all iron, steel, and manufactured goods which are retained as part of the project for which they are contracted to construct, supply materials or goods, satisfy Section 1605 except those items waivered by EPA. The required Buy American Certification is included in the VCWRLF ARRA Contract Inserts Attachment No. 5

It is imperative that the owner enforce the Buy America provisions and ensure that all materials and manufactured goods comply with this provision. The loan recipient is ultimately responsible for compliance with any and all ARRA requirements. Congress has allocated substantial funds to the Office of Inspector General to audit ARRA funded projects. It is recommended that the prime contractor require a Buy American Certification statement from each subcontractor, material provider, or service provider they use. The contractor is required by the Buy American Certification to be able to produce a reasonable, sufficient, and timely verification to the purchaser (loan recipient) of U. S. production of the each component covered by Section 1605 of the ARRA. The loan recipient should be sure the project complies completely before requesting final reimbursement or releasing the contractor.

Waivers

In order to help implement ARRA projects, EPA has developed a waiver approval process to enable projects to move forward in those very limited cases where America-made iron, steel, or manufactured goods are not available or delivery can not be achieved in a timely manner. EPA may issue project specific waivers or national waivers.

There is no process for approving national waivers. If sufficient waiver requests of a similar nature or type are requested, EPA may elect to issue a national waiver. If a national waiver is approved then the project specific waiver for that same circumstance or product is not required. All approved waivers (national or project specific) will be published in the Federal Register.

The loan recipients may apply for a project specific waiver(s) or apply on behalf of the contractor. EPA has sole authority to approve waivers to the Buy American provisions of ARRA. DEQ does not have any review responsibility or authority. Waiver requests should be emailed to region3waiver@epa.gov in the form of a Word document. Waiver requests will be reviewed and approved (if appropriate) by the EPA Regional Administrator, Region 3, unless that approval authority is further delegated.

The loan recipient may seek a project specific waiver at any point before, during, or after the bid process if one or a combination of the three conditions below are met:

1) Iron, steel, and manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

2) Inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the **overall project** by more than 25 percent; or

3) Applying the Buy American requirements of ARRA would be inconsistent with the public interest.

A waiver request must include sufficient documentation to support the request. Requests submitted after the signing of the construction contract must include an explanation of why the request was not submitted before the construction contract was signed. Attachment 6 to the ARRA Contract Inserts is a sample Waiver Request Form. Attachment 7 to the ARRA Contract Inserts was included to assist the loan recipient and/or contractor in preparation of a waiver request. EPA will use the form provided as Attachment 6 or a similar form to review each waiver request. The information requested should be included with the waiver request letter.

EPA may approve, reject, or request additional information. EPA will directly notify the loan recipient of their conclusions regarding each waiver request and copy the Construction Assistance Program. As noted above, it is imperative that the bid documents include American made products to reduce opportunities for non-compliance.

If the loan recipient believes a national waiver applies to their project or a project specific waiver has been approved, the loan recipient should clearly identify the item in the bid specifications noting the waiver description and date of approval. Waivers issued after the specifications are advertised must be incorporated by an addendum to the project specifications.

As a point of clarification, the U. S. Office of Management and Budget has determined that general international trade agreements do not apply to ARRA funded projects except for a few cities nationwide. No localities in Virginia have an approved International Trade Agreement. No waiver for any materials or manufactured goods should be accepted on this basis of International Trade Agreements on any ARRA projects in Virginia.

Bid Package

The contractor's supporting bid information is due to the owner within 21 days of identification of the apparent low bidder. The contractor must include the signed and dated Buy American Certification included as Attachment 5 of the ARRA Contract Inserts. Any bid that contains a partial certification or certifications on condition should be rejected. The owner may opt to entertain waiver requests after the bid opening but should not award bids or proceed with construction until the waiver request is approved by EPA.

Schedule

The loan recipient should require that a construction schedule be submitted as soon as possible after contract award. No waiver based on the inability to deliver American-made iron, steel, or manufactured goods in a timely manner will be considered without a schedule supporting a delay argument.

On-site Monitoring

The owner is responsible for on-site monitoring of the construction work and should attempt to verify that goods and materials used in the project are American made. Any materials or goods that were obviously not American made should be reported to DEQ and appropriate action taken to ensure proper goods or materials are used. Failure of the contractor to comply with the Buy American provisions of the ARRA may result in partial or total loss of ARRA funds.

#15
Loan Program Guidance Package

Wage Determination And Payroll Review (Davis-Bacon Act Compliance)

The American Recovery and Reinvestment Act of 2009 requires that all ARRA funded projects comply with the Davis-Bacon Act (DBA). Federal minimum wage laws are applicable to all construction contracts which are part of the project in excess of $2,000. This applies to all prime contractors and subcontractors. The Davis-Bacon Act stipulates that all laborers and mechanics employed by the contractor or subcontractors on federally assisted projects shall be paid wages at rates not less than those prevailing on similar construction in the area as determined by the Secretary of Labor. The Department of Labor website can be accessed at http://www.dol.gov/. The wage determinations issued by their Withholding section can be accessed at http://www.wdol.gov/ or directly at http://www.gpo.gov/davisbacon/va.html. The websites provide detail on other rules and regulations applicable to projects utilizing federal funding as well. This guidance attempts to explain the requirements but in no way supersedes those requirements.

Loan Recipient Responsibilities

The loan recipient must monitor all aspects of the project but in the case of Davis Bacon Act, they have specific responsibilities:

1. Include the latest DEQ Construction Assistance Program "ARRA Contract Inserts" in the contract documents.

2. Determine which wage determination or determinations are needed for the type of construction and geographic area and include with the contract inserts.

3. Address the requirements of the Davis Bacon Act and payroll review at the preconstruction conference.

4. Assign recipient personnel or contracted personnel to determine what subcontractors are being used on the job and collect weekly payrolls from the contractor for his laborers and mechanics and those of his subcontractors. Examine weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. Immediately conduct interviews in response to any alleged violation of the prevailing wage requirements.

5. The loan recipient or agent shall periodically (at least quarterly):

   a Interview a sufficient number of employees entitled to Davis Bacon Act prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. All interviews shall be conducted in confidence. The loan recipient must use Attachment 15-1 or equivalent documentation to memorialize the interviews.

   b. Verify that contractors and subcontractors include covered employees in fringe benefit plans as provided for in the Department of Labor wage determinations.

c. Review contractors and subcontractors use of apprentices and trainees to verify registration in Department of Labor approved programs and that contractors and subcontractors are not using disproportionate numbers of trainees and apprentices.

6. Ensure all EEO, OSHA, Wage Determination, and any other required postings are displayed on each work site.

The Construction Assistance Program or EPA may monitor the performance of the loan recipient in its enforcement and compliance of the minimum wage rules and regulations. Payrolls and basic records shall be maintained by the contractor and each subcontractor for a period covering three years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work. The loan recipient shall also maintain their records of payrolls, payroll reviews, on-site subcontractors, and compliance actions for at least three years after completion of the work.

Preconstruction Conference

The loan recipient should attempt to reduce the possibilities of labor standards violations by taking preventative measures to minimize misunderstanding of what is required. The loan recipient shall hold a preconstruction conference. One purpose of the preconstruction conference is to apprise the contractor and all available subcontractors of their responsibilities and obligations concerning compliance with the minimum wage laws.

Wage Determination(s)

The loan recipient is responsible for obtaining a wage determination or determinations for the proper construction category and geographic area from the Department of Labor (DOL) (see Wage Determinations on line at http://www.wdol.gov) and incorporating the appropriate wage determination into the construction specifications. The Wage Determinations website allows you to select your state and county and then provides a list of wage determinations by construction category. Some contracts will include multiple types of construction such as "Heavy (water and sewer lines)" and "Building". DOL defines Building as construction, rehabilitation, and repair of sheltered enclosure with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. Water and Sewer is a subsection of heavy construction that relates only to laying or repairing lines. In the case of a force main and pump station contract both a "Building Construction" and a "Heavy Construction" wage determination must be included in the specifications. The contractor must either separate payroll hours out by construction category and pay the minimums required for each category or pay the highest applicable rate between the two for all work done.

In the special case that a project extends across the geographic boundaries of two or more wage determinations, a wage determination for each separate area in which work is done must be included in the specifications. Again, as in the case above, the contractor must either pay the higher rate or separate work hours out according to the geographic district in which the work is done.

Prior to publishing the Invitation to Bid, the loan recipient shall download the proper wage determination(s) for their city or county and construction category. The DOL periodically amends wage determinations. **Ten days prior to opening bids, the loan recipient must check the DOL website to ensure their wage determination has not been amended.** If it has been amended, the recipient must issue a specification addendum to include the latest wage determination in the specifications. As long as bids are opened within the ten day period, the wage determinations will remain in effect for the life of the contract.

Payroll Review

The loan recipients are required to monitor contractor compliance. Once construction begins, the loan recipient must enforce payment of pay scales. The loan recipient will be responsible for the weekly review of

payrolls and a determination that all contractors and subcontractors did submit payrolls as required. Special attention should be paid to claimed apprentices and trainees, deductions, work hours, and pay rates according to job classification and predetermined fringe benefit rates. *The payrolls should be examined within seven days of receipt in order to resolve problems promptly and undertake any corrective actions before they become serious and while workman are still available.*

Payroll Submittals: Each contractor and subcontractor shall furnish to the loan recipient each week a copy of their weekly payrolls for the preceding work week or partial work week. The payroll submitted shall set out accurately and completely all of the following information for each employee: their name; his or her correct classification; hourly rates paid as wages including fringe benefits or a cash equivalent thereof; daily and weekly number of hours worked; deductions made; and actual wages paid. All mechanics and laborers employed upon the site of the work will be paid unconditionally and not less than once a week.

The contractor and loan recipient are responsible for determining which subcontractors worked "on site" during the payroll period. It is recommended that the loan recipient require the contractor keep a log on all subcontractors on site each week and submit that log to the loan recipient with their payroll submittals (Attachment #15-2).

Compliance Statement: Each payroll submitted shall be accompanied by a Statement of Compliance signed by the contractor or subcontractor or his/her agent who pays and supervises the payment of persons employed under the contract and shall certify the following:

1) that the payroll for the payroll period contains the information noted above and that such information is true and complete,

2) that such laborer or mechanic employed on the contract during the payroll period has been paid the full weekly wage earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in regulation, and

3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination.

Attachment #8 of the ARRA Contract Inserts is a suggested certification form DOL Form (#347). The form also includes a sample payroll form. These forms can be downloaded from the DOL's Withholding Divisions website as well. Other forms may be used that contain all of the required information.

Deductions: The weekly payment shall be computed at wage rates not less than those contained in the "wage determination" included in the contract specifications regardless of any contractual relationship alleged to exist between the contractor or its subcontractors and such laborers and mechanics. No deduction or rebates are allowed except those included in the Copeland Act. The DOL website addresses the types of deductions such as garnishments and dues which may be legally deducted. All deductions will be shown on the payroll form with adequate description of each deduction.

Fringe Benefits: Whenever the minimum rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination classification or pay another bona fide fringe benefit or an hourly cash equivalent thereof. If the contractor does not make payment to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account sufficient assets to meet obligations under the plan or program.

Contributions made or cost reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions above. Regular contributions made or costs incurred for more than a weekly period (but not less than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

If a contractor pays fringe benefits to approved plans, funds, or programs in lieu of cash they shall continue to show on the face of the payroll the basic hourly rate and overtime rate paid to his employees. Such a contractor shall indicate on the payroll form what he is paying to approved plans, funds, or programs for each craft and indicate the fringe benefit amounts are not less than were determined in the applicable wage decisions

Contractors who offer no actual fringe benefits shall pay to the employee and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. When overtime is paid, it is not necessary to apply the overtime multiplier to cash paid in lieu of fringes. The rate shall be the normal overtime rate plus the amount of fringe benefits determined for the employees wage classification.

Job Classification and Related Issues

Laborers and mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the actual time worked therein, provided, that the employee's payroll records accurately set forth the time spent in each classification in which work is performed. This includes work in multiple categories on the same Wage Determination or work in classifications on two more Wage Determinations applicable to the same contract.

Any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage decision. Additional classifications shall be requested from the Department of Labor as specified in 29 CFR 5.5 or as amended. The Department of Labor will review an additional classification and wage rate and fringe benefits only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry: and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

The Secretary, Department of Labor, has sole authority to approve or disapprove additional wage classifications. Upon issuance of an additional classification, the new wage rate including fringe benefits where appropriate shall be paid to all workers performing the work in the additional classification from the first day on which work is performed in the classification.

Enforcement and Corrective Actions

The contractor or subcontractor shall make the payroll records required available for inspection, copying, or transcription by authorized representatives of the owner, DEQ, EPA, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. Failure to submit the required records upon request or to make such records available may be grounds for debarment action.

The loan recipient should initiate an investigation when apparent violations are discovered. These would include valid complaints from an employee or other knowledgeable party, habitual contract violations which indicate carelessness on the part of the contractor, discrepancies in time or payroll records, and conditions which evidence apparent falsifications. If these matters can not be resolved through informal actions then DEQ and DOL should be notified.

If violations resulted in underpayment of wages, actions shall be taken to ensure proper restitution. The contractor should be informed in writing of required wage adjustments and the amount of payments to be made in back wages to affected employees. *The contractor shall provide evidence of such restitution by submitting a supplemental payroll containing amounts paid and copies of both sides of cancelled checks issued to the affected employees.* Should the contractor fail to make full restitution and correct violations within a reasonable period of time, funds should be withheld in amounts necessary to ensure proper restitution.

The governing body may withhold from the contractor under this contract so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics including apprentices, trainees, and helpers employed by the contractor and subcontractor, the full amount of wages required by the contract.

A breach of these contract clauses or those contract clauses continued in 29 CFR 5.5 may be grounds for termination of the contract. Falsification of a payroll certification may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States code.

The wage determination(s) shall be posted on the work site and monitored to assure that they remain posted throughout the project.

ATTACHMENT 9-1
DEQ ARRA PG #9

Excerpts from

VDH Drinking Water Funding Program Guidance Package #4
PROCUREMENT
(Includes pages 1-5 only)

I. General

The Recipient's procurement system must be structured to promote free and open competition to the maximum extent possible. It is the Recipient's responsibility to ensure that it receives the required product at the best price and to avoid all unnecessary purchases and expenditures. The Recipient's procurement procedures should also promote, to the maximum extent possible, the use of minority-owned and women-owned businesses. The Recipient must take positive steps to seek out qualified minority-owned and women-owned businesses to directly solicit, or otherwise bring them into the bidding process.

All procurement made during the course of planning, design and construction of the project must be purchased, acquired or contracted for in accordance with Chapter 43, Title 2.2-4300, Code of Virginia, and known as the Virginia Public Procurement Act (Act) and Code of Federal Regulations Title 40 Part 31.36.

This program requires all participants to follow the provisions of the Virginia Public Procurement Act as revised by the 2005 General Assembly Session **with no exceptions recognized for localities under 3,500 in population.**

II. Definitions

Recipient – Eligible water system receiving financial assistance.

Prime Contractor – A business concern that enters into written agreements directly with Recipient. **The term prime contractor** includes agreements to provide services (such as engineering and legal), supplies, equipment and construction.

Subcontractor – A business concern that enters into written agreement directly with the Prime Contractor. Subcontractor includes agreements to provide services (such as engineering and legal), supplies, equipment and construction.

Minority-Owned Business Enterprise (MBE) - A business concern with at least 51 percent owned by one or more minorities or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals.

Woman-Owned Business Enterprise (WBE) - A business concern which is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the

equity ownership interest in which is owned by one or more women, and whose management and daily business operations are controlled by one or more of such individuals.

Small Business Enterprise (SBE) - An independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years.

III. MBE/WBE

A. Six (6) Affirmative Steps

The Code of Federal Regulations Title 40 Part 31.36(e), "Procurement," requires the Recipient and Prime Contractor to take all necessary affirmative steps to assure that minority-owned and women-owned businesses are afforded contracting opportunities. **This requirement applies to all contracts, subcontracts and procurements for services (including Engineering and legal), supplies equipment, and construction.** The goal is to make MBE/WBE firms aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. To achieve this goal, the affirmative steps, otherwise known as "six good faith efforts," that must be followed are:

1. Include qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Ensure that small and minority and women's businesses are solicited whenever they are potential sources of products or services to be bid;
3. Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small and minority and women's businesses (i.e. provide alternative bidding scenarios);
4. Establish delivery schedules to encourage participation by small and minority and women businesses (i.e. timing and flexibility);
5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency, U.S. Department of Commerce; and
6. Require the Prime Contractor to take affirmative steps as outlined in items one through five above to subcontract with small and minority and women's businesses, if they award subcontracts.

B. "Good Faith" Effort Compliance Documentation

The Recipient and Prime Contractors <u>must provide documentation</u> to support a "good faith" effort in the solicitation of MBE and WBE firms <u>only</u>. **A Prime Contractor is a business concern that enters into written agreement directly with the Recipient and includes agreements to provide services (engineering and legal), supplies, equipment and construction**. The submission of documentation to support a "good faith" effort in

the solicitation of Small Business Enterprise is not required; however, the Recipient and Prime Contractors must maintain this documentation in their files for possible future reference. Documentation may include the following:

1. Copies of announcements/postings in newspapers or other media for specific contracting/subcontracting opportunities. Include language in announcements/postings that MBE/WBE firms are encouraged to bid.
2. Copies of announcements/postings of contracting/subcontracting opportunities in trade publications or minority media that target MBE and/or WBE firms.
3. Documentation of sources used to identify potential MBE/WBE firms.
4. Documentation of contacts with MBE/WBE firms, including the firm name, address, telephone number dates of phone calls, letters and the contract results.
5. Copies of direct solicitation letters sent to all MBE/WBE firms.
6. Copies of the MBE/WBE certification documentation for ALL proposed prime and subcontractor MBE/WBE firms.
7. Documentation showing Prime Contractor has made the six good faith efforts to seek qualified MBE/WBE subcontracts - to the extent they use subcontractors.

Attachment 1 - MBE/WBE Compliance Checklist has been developed to assist in documenting compliance with MBE/WBE requirements and must be submitted to VDH.

C. Additional Guidance on Conducting Outreach

1. **Possible sources for identifying MBE/WBE firms:**
   (a). Virginia's Department of Minority Business's website. http://www.dmbe.virginia.gov
   - At Department of Minority Business's website click on "SWaM Vendors Search" tab.
     EXAMPLES:
     - A search for vendors with commodity code 92500 – Engineering Services and 92533 – Engineer Services, Professional yields a list of registered firms.
     - A search for vendors with commodity code 91874 – Legal Consulting and 96149 – Legal Services, Attorney yields a list of registered firms.
     - A search for vendors with commodity code 91356 – Construction, Utility/Underground Projects and 91360 Construction, Water System, Main and Service Line yields of list of registered firms.
     - Select the link to National Institute of Governmental Purchasing (NIGP) to get the listing of commodity codes
   - http://www.dmbe.virginia.gov At Department of Minority Business's website click on "DBE Directory of Certified Vendors" for alphabetically list of construction related registered firms. This listing will contain VDOT work codes and descriptions.

(b). Virginia's Department of Transportation's website. http://www.virginiadot.org/default_flash.asp

- http://www.virginiadot.org/business/bu_bizDev.asp At the Virginia Department of Transportation's website click on "Certified DBE Vendors List."

(c). Federal Government's federal contracts database known as Central Contractor Registry (CCR). www.ccr.gov CCR is the primary vendor database for the federal government. Both current and potential government vendors must register in CCR in order to be awarded federal government contracts.

These various searches yield a list of potentially qualified MBW/WBE businesses. From these lists, identify those businesses in your area to directly solicit. Solicit businesses that you would reasonably expect to respond and submit a quote.

To ensure the Recipient is given credit for good-faith outreach efforts, the Recipient documents the searches executed and the results of the searches, describes criteria used to determine who on the list(s) to directly solicit (probably area code or distance) and describes any other resources used to seek qualified MBE/WBE firms to solicit.

The Recipient must give a copy of this outreach guidance (PG #4) to Prime Contractors because they are likewise required to make good faith outreach efforts when searching for MBE/WBE subcontractors. Prime Contractors are also required to document their outreach efforts just as project owners are.

2. **Possible minority publications to consider when advertising (when it is believed that advertisement may increase MBE/WBE participation :**

Alexandria, Virginia	Metro Herald	(703) 548-8891
Alexandria, Virginia	Qmaid Weekly	(703) 922-6321
Annandale, Virginia	Latino Impacto	(703) 847-0810
Arlington, Virginia	El Tiempo Latino	(703) 527-7860
Centreville, Virginia	Asian Fortune	(703) 968-0202
Falls Church, Virginia	Pho Nho Vietnamese	(703) 533-0264
Fredericksburg, Virginia	LaConexion	(540) 368-5055
Hampton Roads, Virginia	Hampton Roads Voice	(757) 244-5654
Harrisonburg, Virginia	Shenandoah Valley Hit	(540) 432-0416
Harrisonburg, Virginia	Nuevas Raices	(540) 271-0799
Norfolk, Virginia	Norfolk New Journal and Guide	(757) 543-6531
Richmond, Virginia	Richmond Free Press	(804) 644-0496
Richmond, Virginia	Richmond Voice	(804) 644-5617
Roanoke, Virginia	Roanoke Tribune	(540) 343-0336

D. MBE/WBE Fair Share Goals

It is a federal requirement that MBE and WBE firms be provided the opportunity to participate in contract awards for projects. EPA requires that VDH establish MBE and WBE fair share percentage goals for four procurement categories to include: supplies, equipment, services, and construction. A fair share does not constitute an absolute goal, but a commitment on the part of the Recipient and Prime Contractor to attempt to use MBE/WBE firms by carrying out the six affirmative steps. Recipients and Prime Contractors are not required to award contracts to MBE/WBE firms. However, Recipients and Prime Contractors must document good faith efforts to afford MBE/WBE firms the opportunity for contract award.

The Recipient is required to monitor and maintain records regarding the Recipient's and Prime Contractor's efforts to meet and fulfill our affirmative action fair share goals. The Recipient must discuss at pre-bid conference and incorporate into the bid package contract specifications the: **Attachment 2** - Instruction to Bidders/Offerors: MBE/WBE Requirements of 40 CFR 33.240; **Attachment 3 -** Bidder Compliance Statement/Certification Regarding Equal Employment Opportunity, and **Attachment 4 -** Subpart Inserts containing 8 mandatory inserts (Subpart A-H). The VDH will provide the Recipient with its fair share goals to be included in Subpart C of the Contract Inserts prior to solicitation of bids.

Upon receipt of bids, the Recipient shall ascertain submittal of apparent low bidder's documentation to support his or her efforts in the solicitation and recruitment of MBE/WBE contractors, subcontractors, and/or equipment suppliers, etc. The Recipient must evaluate the low bidder's good faith efforts regarding MBE/WBE solicitation prior to contract award.

All MBE/WBE solicitation and recruitment documentation must be submitted for VDH approval along with the bid documents. The MBE/WBE compliance checklist will be part of and will aid in submittals.

Immediately following contract award, the Recipient shall complete and submit to VDH **Attachment 5 -** MBE/WBE Utilization Reporting Form identifying the selection, if any, of minority and female-owned businesses to be utilized during construction of the facility.

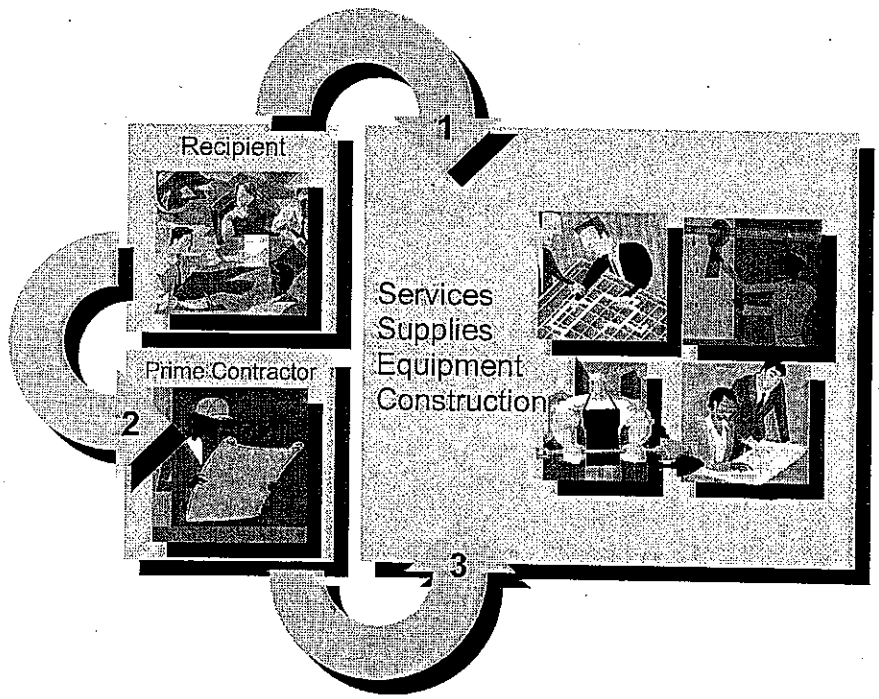
The Recipient is also required to submit the MBE/WBE Utilization Report Form on a **quarterly** basis during the construction period. In addition, the **Prime Contractor** must submit its MBE/WBE Utilization Report Form firms to the Recipient on a quarterly basis during the construction period utilizing Attachment 5. The Recipient must compile these MBE/WBE Utilization Reports and submit them by the 15th of the month following the end of each fiscal quarter to VDH at the following address:

ATTACHMENT 9-2
DEQ ARRA PG #9

Excerpts from
Virginia Department of Health Website

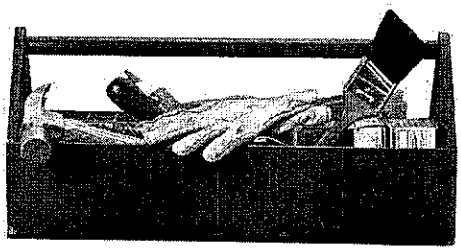
Virginia Department of Health
Drinking Water State Revolving Fund Toolkits

Seeking and Using Disadvantaged Business Enterprises



VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

Office of Drinking Water
Safe Drinking Water for a Healthy Virginia



Virginia Department of Health
Drinking Water State Revolving Fund Toolkits

Seeking and Using Disadvantaged Business Enterprises

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Introduction

The Virginia Drinking Water State Revolving Fund (DWSRF) is a program of the Virginia Department of Health Office of Drinking Water (VDH). DWSRF receives federal funds from the U.S. Environmental Protection Agency (EPA). The money is used to provide low interest rate loans and grants to finance the construction of drinking water capital projects, and to provide grants for planning and design assistance.

As a condition of accepting federal funds, EPA regulations require that fund recipients (and any sub-recipients, such as prime contractors) provide meaningful opportunities for Disadvantaged Business Enterprises (DBEs) to participate in contracts and subcontracts for DWSRF funded construction projects and planning activities.

The goal of this policy is to make disadvantaged firms aware of contracting opportunities to the fullest extent possible through outreach and recruitment activities. DWSRF loan and grant recipients and prime contractors fulfill DBE requirements by making good faith efforts to provide project information to qualifying DBE service providers, documenting their efforts, and providing summary reports on this activity to VDH and EPA.

DWSRF Awards

The VDH DWSRF awards funds for waterworks **construction projects** in the form of low interest rate loans, grants, or a combination of loans and grants. **Planning and design assistance** is available in the form of grants. The policies described in this toolkit apply to all entities receiving financial awards through the DWSRF program, regardless of how the award is structured.

Throughout this document all types of awards, in whatever combination, are simply referred to as "loans and grants."

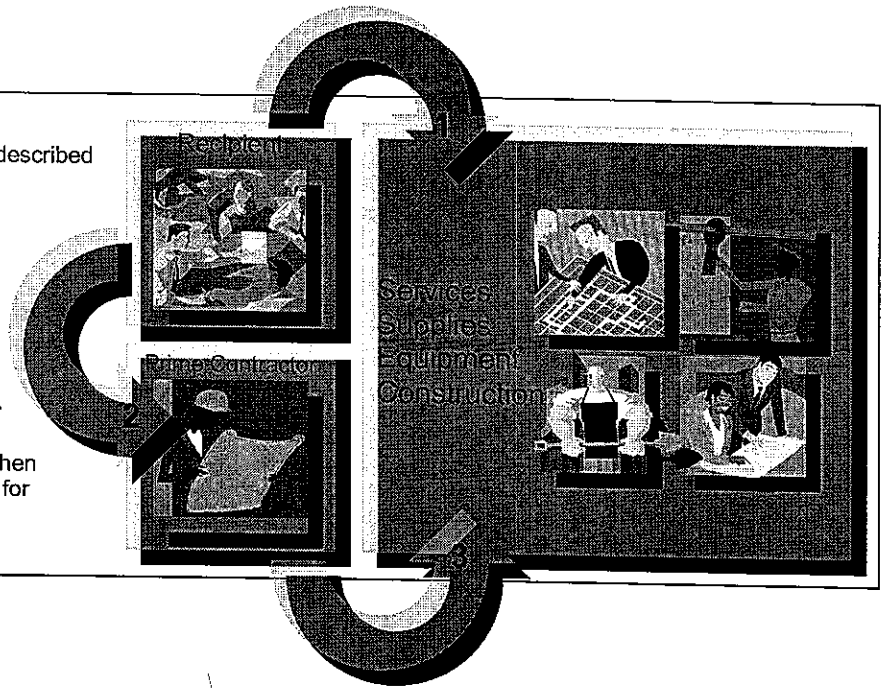
This toolkit is not intended to cover all aspects of required procurement procedures – only those policies and procedures related to DBE participation. For additional information on specific procurement requirements, see **Guidance Package 4**.

The DBE policies and procedures described in this toolkit apply...

1...to all DWSRF loan and grant **recipients** when they are directly procuring services, supplies, equipment, or construction

2...to all DWSRF loan and grant **recipients** when they are retaining the services of a **prime contractor**

3...and to all **prime contractors** when they are soliciting **subcontractors** for services, supplies, equipment, or construction.



What goods and services are covered by this policy?

This policy applies to all contracts, subcontracts and procurements for services (including engineering and legal services), supplies, equipment, and construction. All expenditures using money obtained from DWSRF are covered. The policy applies to DWSRF **recipients** and to **prime contractors.**

Do not prematurely obtain goods or retain services without undertaking good faith efforts to recruit DBE participation. This most commonly occurs when a loan or grant recipient retains engineering or legal services before a DWSRF award is finalized, without extending a participation opportunity to DBE firms. Such actions can result in nullified awards, or in seriously delaying the start of projects, if procurement of services must be redone.

What are Fair Share Objectives?

Recipients of DWSRF financial assistance agreements are **required to seek**, and **encouraged to utilize** small, minority, and women-owned businesses for their procurement needs under the financial assistance agreement, which will include terms and conditions for meeting DBE Program requirements.

Every three years, the Virginia DWSRF negotiates DBE participation goals with EPA for any funded project. These goals, referred to as **Fair Share Objectives**, are included in award contracts and subcontracts. However, Fair Share Objectives are not a quota, and apply only to the desired level of DBE participation.

Definitions

DBEs include small business enterprises (SBEs), minority business enterprises (MBEs) and women's business enterprises (WBEs).

The **Recipient** is an eligible water system receiving DWSRF financial assistance in the form of loans or grants.

The **Prime Contractor** is a business concern that enters into a written agreement directly with a recipient to provide services (such as engineering or legal services), supplies, equipment, or construction.

A **Subcontractor** is a business concern that enters into written agreement directly with a prime contractor, including agreements to provide services, supplies, equipment, and construction

Procurement Category	MBE Goal (%)	WBE Goal (%)
Construction	1.70	0.80
Equipment	0.80	0.50
Services	1.30	0.60
Supplies	0.40	0.50

The chart at left shows the participation goals negotiated between EPA and VDH for the 2007 through 2009 federal fiscal years. Participation goals are renegotiated every three years. Goals for the 2010 through 2012 period have not been established.

Making a **good faith effort** to create participation opportunities for DBE firms is the mechanism for complying with the DBE program requirement. Loan and grant recipients and prime contractors who document their meaningful actions to fulfill the good faith effort requirements will have met the requirement, even if the participation goals are not met. Recipients will not be penalized if actual MBE and WBE participation is below the goals. However, recipients must continue to make good faith efforts even if actual participation has reached the goal.

What are good faith efforts?

The following good faith efforts apply to the procurement categories involving EPA financial assistance funds:

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 whenever they are potential sources.

2: Establish delivery schedules to encourage participation by DBEs. Allow a 30-day minimum advertising period for bidding.

3: Divide total requirements, when economically feasible, into small tasks or quantities, to permit maximum participation by DBEs.

4: Encourage contracting 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 Virginia Department of Minority Business (DMBE), the Virginia Department of Transportation (VDOT), the United States Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the U.S. Department of Commerce to find and recruit DBE participation.

6: Require the prime contractor, if subcontracts are to be let, to take Steps 1 through 5.

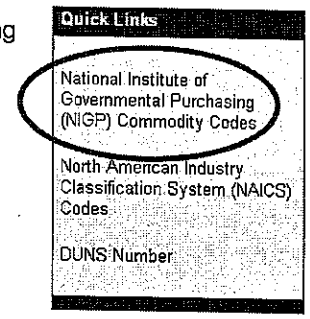
How do I identify qualified DBE firms to directly solicit?

In order for a firm to be counted towards a recipient's or prime contractor's MBE and WBE utilization, a firm must be **certified**. With regard to DWSRF funds, EPA is the ultimate certification authority. However, EPA also recognizes the certifications of the federal Small Business Administration, the federal Department of Transportation, and certification programs administered by state and local governments, as long as their standards for certification meet or exceed EPA's standards.

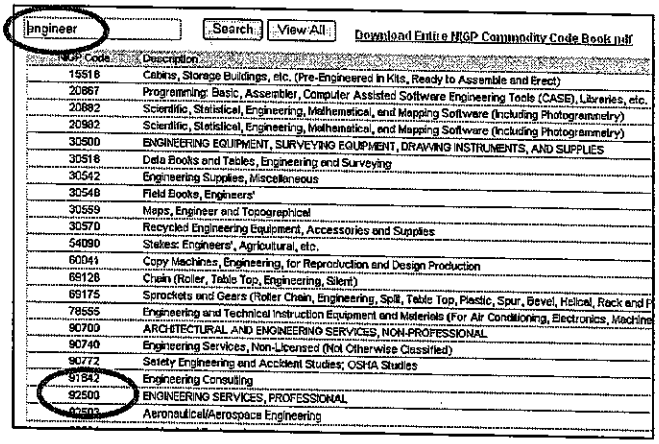
In Virginia, the Virginia Department of Minority Business (DMBE), and the Virginia Department of Transportation (VDOT) maintain online searchable databases for locating qualified DBE firms to solicit. For demonstration purposes, use of the DMBE website to identify potential engineering services will be shown in this toolkit. Keep in mind that the DMBE database and search tools are not maintained by VDH. The content, organization, and function of this tool are subject to change without notice. The information below, using images from the DMBE website, is provided for illustration purposes only. Other certifying agencies will have similar tools for finding qualified MBE and WBE firms.

Step 1 Open the DMBE website at **www.dmbe.virginia.gov**

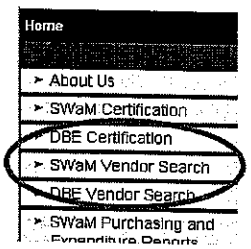
Step 2 Under "Quick Links," select National Institute of Governmental Purchasing (NIGP) Commodity Codes for a list of vendor types.



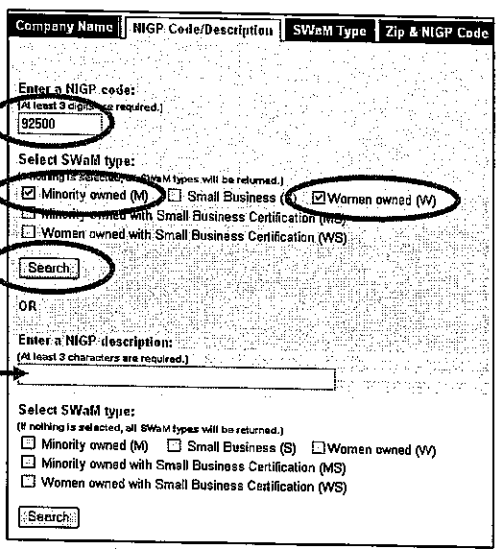
Step 3 In the search box, enter a few key words describing the type of good or service you are seeking, and click "Search." This will narrow the number of NIGP codes shown on the screen. As shown in the illustration at right, the NIGP code for Professional Engineering Services is "92500."



Step 4 Return to the DMBE home page, and select "SWaM Vendor Search." The acronym SWaM refers to Small Woman and Minority-owned vendors.



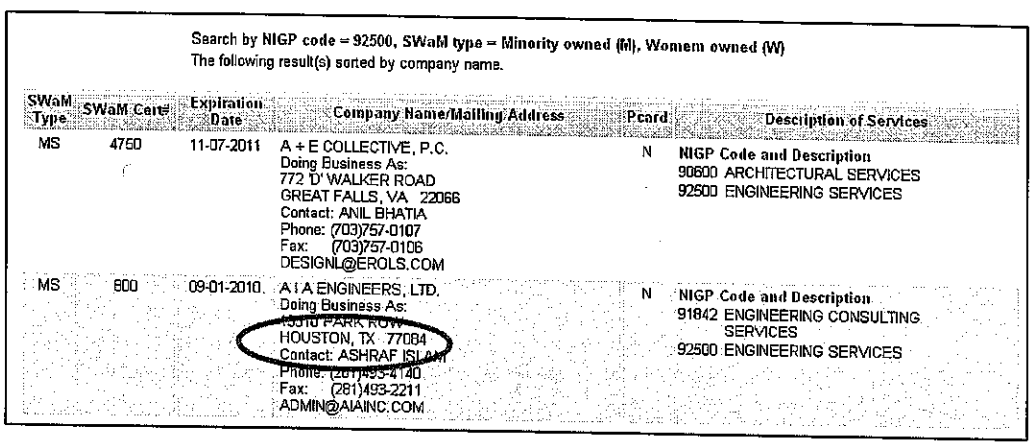
Step 5 Enter the NIGP code, check boxes for "Minority owned" and "Women owned," and click "Search."



(Alternatively, you can skip Step 3, by entering a description of the type of service you are seeking here. This kind of search will return more generalized results, and you will need to review the search results more thoroughly to ensure that they are appropriate for your needs. In general, it is best to pre-filter your results by searching according to NIGP code.)

Step 6 The search will create a list of MBE and WBE engineering firms certified by DMBE, arranged alphabetically.

It will be necessary to review the list carefully, in order to locate firms for your solicitation. Note that the second firm in this illustration is located



Search by NIGP code = 92500, SWaM type = Minority owned (M), Women owned (W)
The following result(s) sorted by company name.

SWaM Type	SWaM Cert#	Expiration Date	Company Name/Mailing Address	Pcard	Description of Services
MS	4750	11-07-2011	A + E COLLECTIVE, P.C. Doing Business As: 772 D' WALKER ROAD GREAT FALLS, VA 22066 Contact: ANIL BHATIA Phone: (703)757-0107 Fax: (703)757-0106 DESIGNL@EROLS.COM	N	NIGP Code and Description 90600 ARCHITECTURAL SERVICES 92500 ENGINEERING SERVICES
MS	800	09-01-2010	A I A ENGINEERS, LTD. Doing Business As: 5010 PARK ROW HOUSTON, TX 77084 Contact: ASHRAF ISLAM Phone: (281)493-4140 Fax: (281)493-2211 ADMIN@AIAINC.COM	N	NIGP Code and Description 91842 ENGINEERING CONSULTING SERVICES 92500 ENGINEERING SERVICES

in Houston, Texas. In order to meet the good faith requirements, you must ensure that DBE solicitations are **meaningful.** Do not circumvent the intent of the DBE good faith and fair share requirements by soliciting firms with little realistic opportunity for participation. An otherwise qualified MBE firm in Texas would generally be considered an unlikely candidate for contract to supply goods or services for a waterworks project in Virginia, and should be excluded from your solicitation list.

The DMBE database has a feature that allows you to search for NIGP codes cross referenced by ZIP codes. However, this search is strictly limited to the ZIP code entered, and will not return contact information for neighboring ZIP codes. If you use this search option, it may be necessary to search several adjacent ZIP codes in the vicinity of your project to get useful results.

Step 7 To create a list of WBE and MBE firms, the information from the DMBE search can be highlighted (by holding the mouse button while dragging the cursor across the text of interest), copied, and pasted into a new document. Using this method will make it easier to further document your good faith efforts to solicit DBE firms. The list can readily be updated with additional information, such as the date solicitation letters were sent, the date and time bids were received, bid details, and the outcome of bid evaluations. This list should be included as an enclosure with your documentation package, which you will provide to VDH as evidence of your good faith efforts.

For illustration purposes, only the DMBE website has been shown here. Other internet resources for locating certified MBE and WBE firms include the Virginia Department of Transportation web site at **www.virginiadot.org/business/bu_bizDev.asp** , and the federal contract Central Contract Registry (CCR), at **www.ccr.gov**.

What should I include in a direct solicitation to a DBE firm?

A direct solicitation is simply a mailed invitation to a certified DBE firm to participate in the bid process. For illustration purposes only, a sample solicitation letter for a DWSRF construction project is shown at right. A solicitation letter should be sent to the DBE firms identified in your DBE search. A copy of each solicitation letter should be retained for your documentation package, to show your good faith efforts to give DBE firms an opportunity to participate. This sample letter references a bid invitation, which is typically provided as an enclosure. The full scope of the project and project details needed for bid preparation are usually included in this enclosure.

Direct solicitation of WBEs and MBEs should be made at the same time other potential sources of goods and services are contacted for bids. Be sure your solicitations are distributed to provide a reasonable amount of time prior to bid submission or closing dates.

Your solicitation should include:

1. a specific description of the work to be contracted
2. how and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation

Anytown Virginia
Est. 1776

Utilities Division
123 Government Street
Anytown, Virginia 22345

Ms. Amy Johnston
All-Towns Construction, Inc.
321 Main Street
Anytown, Virginia 22345

June 1, 2009

RE: Anytown Water System

Dear Ms. Johnston:

Sealed bids for the construction of Anytown Water System Improvements will be received at the Anytown Utilities Division administrative offices, 123 Government Street, Anytown, Virginia, until 2:00 p.m. on June 30, 2009, and then read aloud in the Anytown Utilities board room. The project is a waterline replacement project, involving approximately 5,000 LF of 6-inch waterline, appurtenances, and a pressure reducing valve vault.

Copies of the bidding documents may be obtained from the offices of the Town Engineer. Please refer to the attached Invitation to Bid for additional information.

We look forward to your positive response to this activity.

Sincerely,

Taylor Smith, PE
Anytown Virginia Engineer
(276) 123-4567
email tsmith@anytown.va.us

3. the date and time the quotation is due, and
4. the name, address, and phone number of the person to contact for additional information.

Can I use a newspaper advertisement to solicit DBE participation?

It is acceptable to use newspaper or other advertisements to solicit DBE participation, if you believe that it will increase MBE and WBE responses to your request for bids. However, print advertising is very indirect, and it will not be possible to show that you have met the good faith effort requirements if you are relying on print media alone. Print advertising should only be used to supplement direct solicitation of DBE firms. Further, if you are relying on print advertising to supplement your good faith DBE efforts, you should include publications that target minority or women readers.

Below is a partial list of minority publications in Virginia. As is the case with direct solicitation, your selection of print media should be made to create **meaningful** DBE participation opportunities. It is unlikely that a print advertisement in a Northern Virginia publication will be seen by qualified MBE and WBE firms in Southwest Virginia. To meet good faith effort requirements, your advertisement should be in **local** publications, to the fullest extent possible.

Locale Served	Publication	Phone
Alexandria, Virginia	Metro Herald	(703) 548-8891
Alexandria, Virginia	Omaid Weekly	(703) 922-6321
Arlington, Virginia	El Tiempo Latino	(703) 527-7860
Hampton Roads, Virginia	Hampton Roads Voice	(757) 244-5654
Norfolk, Virginia	Norfolk New Journal and Guide	(757) 543-6531
Richmond, Virginia	Richmond Free Press	(804) 644-0496
Richmond, Virginia	Richmond Voice	(804) 644-5617
Roanoke, Virginia	Roanoke Tribune	(540) 343-0336

This list is provided for illustration purposes only. VDH does not endorse the services of these publications.

Your newspaper advertisements requesting bids (including those that run in general circulation newspapers) must include the following statement:

> MBE/WBE firms are encouraged to submit bids. Bidders must comply with the following: the President's Executive Order # 11246 prohibiting discrimination in employment regarding race, color, creed, sex, or national origin; the President's Executive Orders # 12138 and 11625 regarding utilization of MBE/WBE firms; and the Civil Rights Act of 1964. Bidders must certify that they do not or will not maintain or provide for their employees any facilities that are segregated on the basis of race, color, creed, or national origin.

Obtain an affidavit of publication, and copies of any print advertisements you run in general circulation and special-interest newspapers, and include them in your good faith effort documentation package.

Can I make personal contacts to solicit DBE firms?

It is permissible to make personal contacts (directly, by phone, or email) to solicit DBE participation. Because such contacts usually do not automatically provide you with substantial documentation, it is crucial to create a written record of the contact. Your record must be at least as detailed as if the DBE firm had been solicited by mail, showing that the firm had access to all of the information needed to make a meaningful bid.

How do I document good faith efforts?

Loan and grant recipients and prime contractors are expected to provide meaningful opportunities for MBEs and WBEs to participate in contracts and subcontracts for DWSRF funded construction projects and planning activities. EPA and VDH negotiate participation goals for MBE and WBE firms, called Fair Share Objectives, which are expressly included in loan and grant agreements. However, these Fair Share Objectives are not quotas that must be fulfilled. Instead, recipients and prime contractors demonstrate compliance with the DBE requirements by making a good faith effort to include MBE and WBE firms as meaningful participants. Consequently, **how well you document your solicitation efforts is crucial for determining DBE compliance.**

Complete the MBE/WBE Compliance Checklist (facsimile shown below) as the "cover page" for your documentation package. A copy of the checklist can be downloaded in MSWord format at **MBE/WBE Compliance Checklist** . Use the order of checklist items to build the package.

(2 pages)

Virginia Department of Health
Drinking Water Funding
MBE/WBE Compliance Checklist

Name of Recipient/Prime Contractor: _____

Project Name: _____ Project Number: _____

Check Procurement Type: (Check applicable box)
- ☐ Services – Engineering
- ☐ Services – Legal
- ☐ Construction Contractor (Prime)
- ☐ Construction Contractor (Subcontract)
- ☐ Supplies
- ☐ Equipment

In order to be in compliance with federal procurement requirements, funding recipients and contractors are obligated to make reasonable efforts, otherwise known as "good faith efforts," to solicit Minority-Owned Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) in their procurement methods.

The goal of this good faith effort is to increase contracting opportunities for MBE/WBE firms. It is not sufficient to just have a competitive bidding process that is open to MBE/WBE firms. Funding recipients and contractors must seek out qualified MBE/WBE firms.

Recipients are required to include provisions in their bid documents and take affirmative steps to solicit MBE/WBE firm participation in procuring services, supplies, equipment, and in awarding construction contract.

The successful prime contractor must also seek MBE/WBE firm participation in obtaining subcontracts for construction work, equipment, services, and supplies prior to bid submittal.

Demonstration of good faith efforts must be documented. This checklist is designed to facilitate and document compliance with "good faith efforts" and must be submitted to VDH prior to contract award. Failure to comply with MBE/WBE procurement requirements will result in the recipient incurring costs that are ineligible for reimbursement from our Program.

Please check boxes where activities are completed and provide documentation; explain unchecked boxes in comments below and use additional pages if necessary:

- ☐ Certified Affidavit of Publication of Newspaper advertisement soliciting MBE/WBE participation. (Suggested advertisement language: Minority Owned Businesses (MBEs) and Women Owned Businesses (WBEs) are encouraged to respond.)
- ☐ Your advertisements from publications that target MBE/WBE firms. (Only consider when it is believed that this advertisement may increase MBE/WBE participation.)

of MBE/WBE firms. (Documentation must be on file and available for
se award lists to VDH.) Possible resources include:
a.virginia.gov
.

to identify MBE/WBE firms:

MBE/WBE firms for direct solicitation.

E/WBE firms. Provide list of MBE/WBE firms solicited and solicitation letters
BE firms. (Solicit those MBE/WBE firms that you would reasonably expect to
it a quote.)

acts (i.e. telephone calls) and dates of contacts with MBE/WBE firms.

it analysis to identify portions of work that can be divided and performed by
E firms. (Reduced contract size/quantities when economically feasible to
participation of MBE/WBE firms.)

EE firm certification for all proposed prime and subcontractor MBE/WBE firms.

should take reasonable affirmative steps to subcontract with MBE and WBE
subcontracting opportunities arise during the performance of the contract.

Recipient/Contractor's Signature _____ Date _____

Your completed package will include (if applicable):

1. A completed and signed MBE/WBE checklist
2. A certified affidavit of publication, showing that your newspaper advertisements solicited MBE/WBE participation
3. Copies of actual advertisements that ran general interest newspapers, and in publications that target MBE/WBE firms
4. Lists of MBE/WBE firms that you generated
5. The sources you used to generate your MBE/WBE solicitation lists
6. Copies of solicitation letters sent to MBE/WBE firms
7. Description (including dates) of any personal contacts such as telephone calls made to solicit MBE/WBE firms
8. Written description of any special efforts made to enhance MBE/WBE participation (such as reducing the size or quantity of services or goods to be provided, in order to maximize bidding opportunities for MBE/WBE firms), and
9. Copies of MBE/WBE certifications or approval letters from the MBE/WBE firms with whom you plan to do business.

When do I submit good faith effort documentation to VDH?

Your documentation package, consisting of the MBE/WBE Compliance Checklist and attachments should be submitted to the VDH Project Engineer at the time you are ready to begin procuring goods and services. The VDH Project Engineer assigned to your project will review your documents as part of a biddability review, which occurs before contracts for goods and services can be awarded. After review and approval by the VDH Project Engineer, a finalized copy of the documentation package must be submitted to the VDH DWSRF Project Officer.

Should I prepare a bidders list?

Funding recipients are required to create and maintain a bidders list that includes all firms that bid or quote on EPA assisted projects. An entity that receives $250,000 or less combined on all projects in a fiscal year is exempt from developing a bidders list.

Are there additional requirements for recipients?

The DBE good faith effort requirements indicate that prime contractors are also obligated to make good faith efforts to solicit MBE/WBE firms when they establish subcontracts to procure goods and services. These requirements must be included as specifications in the contract between the loan or grant recipient and the prime contractor. This approach is used to ensure that potential respondents to the solicitation recognize and perform the necessary steps prior to the bid submission deadline, and that contract negotiations with a potential subcontractor have also included good faith requirements.

This mechanism is designed to provide opportunities for MBEs and WBEs to be aware of and compete for subcontracts offered by the prime contractor. For example, recipients must require their prime contractors to employ the six good faith efforts even if fair share objectives have been achieved. Likewise, if an MBE/WBE 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 in soliciting a replacement subcontractor, even if recruitment objectives have already been met. Such conditions should be spelled out in detail in the contract between the recipient and prime contractor.

VDH has prepared inserts for your contract with the prime contractor. Mandatory contract language is included in the **Guidance Package 4**, or by selecting the links below:

Instruction to Bidders/Offerors: MBE/WBE Requirements of 40 CFR 33.240
Bidder Compliance Statement/Certification Regarding Equal Employment Opportunity
Subpart Inserts A through H (includes 8 mandatory inserts)

An important change was made by the May 2008 revisions to the federal DBE regulations: Recipients must stipulate that prime contractors shall pay any subcontractors for satisfactory performance no more than 30 days from the date that the prime contractor receives payment from the recipient.

What additional documentation must recipients provide?

In addition to the documentation package you will prepare to demonstrate your good faith efforts to solicit bids from WBE and MBE firms (see instructions beginning on **Page 3**), you must also provide **ongoing** documentation of actual participation by WBEs and MBEs if they are selected to provide goods and services.

Immediately following a contract award to an MBE or WBE firm, recipients must complete and submit an MBE/WBE Utilization Reporting Form to VDH, identifying the MBE or WBE businesses that have been selected to provide goods or services. This form is included as an attachment to **Guidance Package 4**, or it can be downloaded at:

MBE/WBE Utilization Reporting Form (Includes submittal instructions)

Recipients must also update and submit the MBE/WBE Utilization Report Form on a quarterly basis for the duration of the project. Page 2 of the form is designed for tabulating your quarterly expenditures with MBE and WBE firms.

In addition, prime contractors are required to provide this information (using the same form) directly to recipients for any MBEs or WBEs that have been awarded subcontracts. Recipients must compile reports from their prime contractors, and submit them to VDH by the 15th of the month following the end of each fiscal quarter.

Are there additional requirements for prime contractors?

As a prime contractor, your obligation to fully participate in the DBE program will be stipulated in your contract with the recipient. When prime contractors seek goods and services from potential subcontractors, they are subject to the same DBE requirements as recipients, described throughout this toolkit:

- They are subject to the same Fair Share Objectives for WBE and MBE participation.
- They must make good faith efforts to create participation opportunities that enable WBE and MBE firms to compete to provide services, supplies, equipment, and construction.
- They must document their good faith efforts.

An important change was made by the May 2008 revisions to the federal DBE regulations: Recipients must stipulate that prime contractors shall pay any subcontractors for satisfactory performance no more than 30 days from the date that the prime contractor receives payment from the recipient.

What additional documentation must prime contractors provide?

In addition to the documentation package you will prepare to demonstrate your good faith efforts to solicit bids from WBE and MBE firms (see instructions beginning on **Page 3**), you must also provide ongoing documentation of actual participation by WBEs and MBEs if they are selected to provide goods and services.

Immediately following a contract award to an MBE or WBE firm, prime contractors must complete and submit an MBE/WBE Utilization Reporting Form to VDH, identifying the MBE or WBE businesses that have been selected to provide goods or services. This form is included as an attachment to **Guidance Package 4**, or it can be downloaded at

MBE/WBE Utilization Reporting Form (Includes submittal instructions)

The MBE/WBE Utilization Report Form must be updated on a quarterly basis for the duration of the project. Page 2 of the form is designed for tabulating your quarterly expenditures with MBE and WBE firms. This information (using the same form) should be submitted directly to recipients for any MBEs or WBEs that have been awarded subcontracts. The recipients will compile reports from their prime contractors, and submit them to VDH by the 15th of the month following the end of each fiscal quarter.

When a contract between a prime contractor and a WBE/MBE subcontractor is terminated, it is the responsibility of the prime contractor to notify the recipient **in writing** as soon as possible.

Effective May 2008, changes to the federal DBE regulations now require prime contractors to provide reports on WBE/MBE subcontractors directly to EPA. The required forms and guidelines for their use can be found at **EPA Forms**. Copies of the required forms can also be downloaded at

6100-2 Subcontractor Participation Form
6100-3 Subcontractor Performance Form
6100-4 Subcontractor Utilization Form

Where do I go for more information or assistance?

This toolkit has focused on procurement for your DWSRF loan or grant project only as it relates to meeting DBE requirements. For more information on procurement, please see the complete procurement guidance package at **Guidance Package 4**. If you need additional assistance, contact the DWSRF Project Engineer assigned to your project, or contact the DWSRF Project Officer at (804) 864 7507.

NIGP (National Institute of Governmental Purchasing) Commodity Codes
www.dmbe.virginia.gov

links on web page to SWaM vendors search list and to NIGP (National institute of Governmental Purchasing) commodity codes. Scroll down on first page of SWaM vendors, it looks blank when first opening up

Italics primarily related to wastewater projects

06578 Sewer/Catch Basin Cleaning Body and Equipment
13510 Brick Sewer
15000 Builder Supplies
21000 Concrete and metal culverts, pilings, septic tanks
21035 Joint Sealing Compound (For Sewer and Drain Pipes)
28000 Electrical cables and wires
28500 Electrical equipment and supplies
30500 Engineering and surveying equipment
33000 Fencing
46077 Sewage and Sludge Pump Hose
48522 Cleaner, Sewer, Septic Tank, and Waste Pipe, Acid and Caustic Types
48524 Cleaner, Sewer, Septic Tank, and Waste Pipe, Aerobic Bacteria and Fungi Type
51500 Lawn Maintenance
65800 Pipe and Tubing
67012 Grout, Pip, and Sewer
67061 Sewer Pipe Cleaning Machines, Power Driven; and Parts
72064 Sewage and Sludge Pumps, Submersible
72067 Sewage and Sludge Pumps, Surface Mounted
72084 Water well accessories
72090 Well pumps
83000 Tanks-cement lined, glass-lined, fiber-lined
88500 Water and wastewater treating chemicals
88582 Sewer and Septic Treating Chemicals
89000 Water supply, groundwater, sewage treatment, and related equipment, waterproofing
89003 Back Flow Preventers for Water/Sewer Pipe
89051 Root Cutting Equipment for Sewer Lines
89063 Sewer Analyzing, Monitoring, Probe and Related Equipment
89064 Sewer Inspection Equipment
89065 Sewage and Waste Treating Equipment and Supplies
89066 Sewer Lift Stations and Parts
89095 Recycled Water Supply, Groundwater and Sewage Treatment Equipment, Accessories, and Supplies
90680 Sewage Collection, Treatment, and Disposal - Architectural
90684 Telecommunications
90976 Site work

91063 Public utilities-water, sewer, and gas maintenance and repair
91082 Wiring and other electrical maintenance and repair
91082 Electrical contractor
91200 Construction services, general
91233 Construction, general-digging, ditching
91240 Demolition
91244 Excavation Services
91300 Construction services, heavy
91340 Construction, pipeline
91345 Construction, Sewer and Storm Drain (Including Removal)
91356 Construction, utility and underground projects
91360 Construction, water system, main and service lines, water utilities
91381 Maintenance and repair, Sewer and Storm Drain (Including Removal)
91438 Electrical
91842 Engineering consulting
92000 Data processing, computer, and software services
92500 Engineering services, professional
92587 Sewage Collection, Treatment, and Disposal/Engineering
92517 Civil Engineering
92533 Engineer services, professional
92567 Mechanical engineering
92597 Water supply, treatment, and distribution engineering
93691 Water Supply and Sewage Treatment Equipment Maintenance and Repair
93972 Radio/telecommunication/telephone
95944 Electrical and communication equipment
96239 Hauling/dump trucks
96292 Video Scanning of Sewers, Waterwells, etc
96296 Well services
98832 Grading/gradalls, clearing, demolition
98852 Landscaping
98184 Water and Sewer Equipment (including Well Pointing) Rental or Lease

RECORD OF EMPLOYEE INTERVIEW

GRANTEE/CONTRACT: #			
NAME OF PROJECT:			
CONTRACTOR ☐ OR SUBCONTRACTOR ☐:			
1. NAME OF EMPLOYEE:			
2. EMPLOYEE'S PERMANENT HOME ADDRESS:		LOCATED IN PROJECT AREA?	
		YES	NO
3. LAST DATE WORKED THIS PROJECT:	NUMBER OF HOURS WORKED THAT DATE:		
4. HOURLY PAY RATE: $			
5. WHAT IS YOUR JOB CLASSIFICATION:			
6. WHAT ARE YOUR DUTIES;			
7. TOOLS OR EQUIPMENT USED:			
8. PAID AT LEAST TIME AND A HALF FOR ALL HOURS WORKED OVERTIME		YES ☐	NO ☐
9. EVER THREATENED, INTIMIATED OR COERCED INTO GIVING UP PART OF PAY?		YES ☐	NO ☐
10. DUTIES/JOB CLASSIFICATION OBSERVED BY INTERVIEWER:			
11. MINORITY STATUS	YES ☐	NO ☐	GENDER: MALE ☐ FEMALE ☐
12. DATE (month/year) HIRED:	*OR* RECALLED (if applicable):		
Signature of Interviewer	Date of Interview		

PAYROLL EXAMINATION

REMARKS:

Signature of Payroll Examiner	Date

CERTIFICATION OF SUBCONTRACTORS ON SITE

(To Be Submitted As Part of Weekly Payroll Report)

I, _____, the general contractor, hereby certify that all employees denoted on attached payroll reports for the week ending / / represent all employees that worked on CIG# - project for _____ *(insert Grantee's Name)*, <u>including employees of all subcontractors</u>.

_____ _____/_____/_____
Name and Title Date

Names of Subcontractors That Worked On Project for This Pay Period.

1. _____
2. _____
3. _____
4 _____
5. _____

Monthly Register of Contractors, Subcontractors and Suppliers

Month Covered: _____, 20__

Register Each Procurement Over $10,000 (or over $1,000 if a housing rehab project) one time only, in month of occurrence

SECTION I: Identification of Level of Submittal, see instructions on back of form

(1) Grantee _____ Grant Contract # _____ Project Location

(2) Prime Contractor _____ IRS# (or owner's SSN)

(3) Subcontractor _____ IRS# (or owner's SSN)

SECTION II: Details of Procurements

(see Instructions) choose one:	Name and Address of Business, and IRS# (or owners' SSN)	Contract Description or Items Supplied	Amount of Contract or Purchase	Ownership of Business (check All that apply)	
____ Prime Contractor ____ Subcontractor ____ Supplier	IRS# (or SSN):		$	____Minority Business ____ Local Business** ____ Female-Owned Business	____ White American ____ Black American ____ Native* American ____ Hispanic American ____ Asian American ____ Not American Owned
____ Prime Contractor ____ Subcontractor ____ Supplier	IRS# (or SSN):		$	____Minority Business ____ Local Business** ____ Female-Owned Business	____ White American ____ Black American ____ Native* American ____ Hispanic American ____ Asian American ____ Not American Owned
____ Prime Contractor ____ Subcontractor ____ Supplier	IRS# (or SSN):		$	____Minority Business ____ Local Business** ____ Female-Owned Business	____ White American ____ Black American ____ Native* American ____ Hispanic American ____ Asian American ____ Not American Owned
____ Prime Contractor ____ Subcontractor ____ Supplier	IRS# (or SSN):		$	____Minority Business ____ Local Business** ____ Female-Owned Business	____ White American ____ Black American ____ Native* American ____ Hispanic American ____ Asian American ____ Not American Owned

IATIVE AMERICAN - American Indian/Alaskan Natives **LOCAL BUSINESS - Business located in immediate county(s) surrounding project area