

MONTANA WATER POLLUTION CONTROL STATE REVOLVING FUND
AGENCY SUPPLEMENTAL CONDITIONS

Equal Employment Opportunity and Affirmative Action Requirements on Federally Assisted Construction Contracts

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade	<u>3.3%</u>
Goals for female participation in each trade	<u>6.9%</u>

These goals are applicable to all the contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number for the subcontractor; employer identification number of the subcontractor, estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed (see form on page 11).

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the BILLINGS ECONOMIC AREA.

This notice shall be included in, and shall be a part of, all solicitations for offers and bids on all federal and federally assisted construction contracts or subcontracts.

EQUAL OPPORTUNITY CLAUSE

The Equal Opportunity Clause published at 41 CFR Part 60-1.4(b) is required to be included in, and is part of, all nonexempt federally assisted construction contracts and subcontracts. The Equal Opportunity Clause shall be considered to be a part of every contract and subcontract required by the regulations in this part to include such a clause, whether or not it is physically incorporated in such contracts.

In addition to the clause described above, all federal contracting officers, all applicants, and all non-construction contractors, as applicable, shall include the specifications set forth in this section in all federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to §60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive Order.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

- a. "Covered Area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the employer's quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area, (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs (7)(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals

are published periodically in the federal register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under (7)(b) above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7)(a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (7)(a) through (p) of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority

groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive order if a specific minority group of women is under-utilized).

10. The contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program)

Prohibition against Listed Violated Facilities

A. REQUIREMENTS

(1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Pub. L. 92-604) and section 308 of the Clean Water Act (33 U.S.C. 1251, as amended), respectively, which relate to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency list of violating facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from the listing.

(3) To use his best efforts to comply with clean air and clean water standards at the facilities in which the contract is being performed.

(4) To insert the substance of the provisions of this clause, including this paragraph (4), in any nonexempt subcontract.

B. DEFINITIONS

(1) Air Act means the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

(2) Water Act means the Clean Water Act, as amended (33 U.S.C. 1251 etseq.).

(3) Clean Air Standards means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110 (d) of the Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under section 111 (c) or section 111(d), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) Clean Water Standards means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of Water Act (33 U.S.C. 1317).

(5) Compliance means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency in accordance with the requirements of the Air Act or Water Act and regulations.

(6) Facility means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, to be used in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are located in one geographical area.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 115-232, section 889, covered telecommunications equipment or services means any of the following:

- a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- b. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- c. Telecommunications or video surveillance services provided by such entities or using such equipment.
- d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list.

Williams-Steiger Occupational Safety and Health Act of 1970

A. AUTHORITY

(1) The contractor is subject to the provisions of the Williams-Steiger Occupational Safety and Health Act of 1970.

(2) These construction documents and the joint and several phases of construction hereby contemplated are to be governed, at all times, by applicable provisions of the Federal law(s), including but not limited to the latest amendment of the following:

a. Williams-Steiger Occupational Safety and Health Act of 1970, Public Law 94-596;

b. Part 1910 - Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations;

c. Part 1926 - Safety and Health Regulations for Construction, Chapter XVII of Title 29, Code of Federal Regulations.

B. SAFETY AND HEALTH PROGRAM REQUIREMENTS

(1) This project, its prime contractor and its subcontractors, shall at all times be governed by Chapter XVII of Title 29, Code of Federal Regulations, Part 1926 - Safety and Health Regulations for Construction (29 CFR 22801), as amended to date.

(2) To implement the program and to provide safe and healthful working conditions for all persons, general project safety meetings will be conducted at the site at least once each month during the course of construction, by the construction superintendent or his/her designated safety officer. Notice of such meeting shall be issued not less than three (3) days prior, stating the exact time, location, and agenda to be included. Attendance by the owner, architect, general foreman, shop steward(s), and trades, or their designated representatives, witnessed in writing as such, shall be mandatory.

(3) To further implement the program, each trade shall conduct a short gang meeting, not less than once a week, to review project safety requirements mandatory for all persons during the coming week. The gang foreman shall report the agenda and specific items covered to the project superintendent, who shall incorporate these items in his/her daily log or report.

(4) The prime contractor and all subcontractors shall immediately report all accidents, injuries, or health hazards to the owner and architect, or their designated representatives, in writing. This shall not obviate any mandatory reporting under the provisions of the Occupational Safety and Health Act of 1970.

(5) This program shall become a part of the contract documents and the contract between the owner and prime contractor, prime contractor and all subcontractors, as though fully written therein

Build America, Buy America (BABA) Requirements

On November 15, 2021, the “Infrastructure Investment and Jobs Act,” (Public Law 117-58), which includes the Build America, Buy America Act (Public Law 117-58, Title IX, Subtitles A and B, Sections 70901-70941) was enacted. This law applies to most programs that receive federal funds including the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund programs.

Section 70914(a) of the Act states that none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

For iron and steel, all manufacturing processes, from the initial melting stage through the application of coatings must occur in the United States. This includes products made primarily of iron or steel such as lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, and reinforced precast concrete and construction materials made primarily of iron or steel such as wire, cables, rebar, framing, joists, decking, grating, railings, stairs, and fencing.

The term “manufactured product” means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product. This includes (but is not limited to) pumps, motors, drives, mixers, motorized screens, controls and switches, membrane bioreactor systems, membrane filtration systems, clarifiers, disinfection systems, HVAC systems, and skids that contain multiple components (e.g., treatment, pumping, etc.).

For construction materials, all manufacturing processes for the construction material occurred in the United States. This includes an article, material, or supply that is or consists primarily of non-ferrous metals (construction materials made of ferrous metals are covered under iron and steel), plastic- and polymer-based products including PVC, composite building materials, and polymers used in fiber optic cables, glass including optic glass, lumber, and drywall.

BABA CERTIFICATION FORMS – The Contractor must ensure that all qualifying iron and steel components, manufactured products, and construction materials used in the project have met the BABA requirements. To verify BABA compliance, the Contractor must obtain a “Manufacturer Certification” form (or equivalent statement) from the product manufacturer. Upon completion of the project, the Contractor shall provide the Owner with the “Contractor Certification” form and copies of all “Manufacturer Certification” forms and/or statements. The referenced certification forms are located in the program forms.

BABA WAIVERS - A waiver from the Build America, Buy America requirements may be issued by the head of a Federal agency if it is found that: 1) applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”); 2) types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or 3) inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”). Waiver requests must be submitted to the state for review.

NATIONAL BABA WAIVERS – The EPA has issued the following national waivers: 1) Adjustment Period (September 2, 2022); 2) Small Project (September 26, 2022); 3) De Minimis (October 21, 2022).

Guidance for Participation by Disadvantaged Business (DBE) Enterprises In United States Environmental Protection Agency Programs of 40 CFR 33.

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

A. REQUIREMENTS

1. The recipient and prime contractor will exercise good faith efforts to attract and utilize small, minority, and women's business (DBEs) enterprises primarily through outreach, recruitment, and race/gender neutral activities. At a minimum, the recipient and project bidders will follow the six affirmative steps below:
 - a. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities including placing DBEs on solicitation lists and soliciting them whenever they are potential sources;
 - b. Make information on forthcoming opportunities available to DBEs and arrange time frames and establish delivery schedules, when the requirements of the work permit, which will encourage participation by DBEs;
 - c. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs; including dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by DBEs;
 - d. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually;
 - e. Using the services of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and
 - f. Require a. through e. to be taken if subcontracts are awarded.

B. FAIR SHARE OBJECTIVE

1. The fair share objective for this project is 2 %MBE's and 3 % WBE's.

C. DEFINITIONS

1. Minority Business Enterprise (MBE) is a business concern which is:
 - a. Certified as socially and economically disadvantaged by the Small Business Administration;
 - i. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.
 - ii. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the Small Business Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individuals. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans), are to be considered socially and economically disadvantaged. Economically and socially disadvantaged individuals are deemed to include women.
 - b. Certified as a minority business enterprise by a State or Federal agency; or
 - c. An independent business concern which is at least 51 percent owned and controlled by minority group member(s).
 - i. A minority group member is an individual who is a citizen of the United States and one of the following:
 1. Black American;
 2. Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America)
 3. Native American (American Indian, Eskimo, Aleut, native Hawaiian); or
 4. Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas,

Laos, Cambodia, Taiwan or the Indian subcontinent).

- ii. In order to satisfy the third criteria of the MBE definition, the minority ownership's interest must be real, substantial and continuing. Such interest is characterized by:
 1. Risk of loss/share of profit commensurate with the proportional ownership; and
 2. Receipt of the customary incidents of ownership, such as compensation (i.e. salary and other personnel compensation).
 - iii. A minority owner must have and exercise control of the business decisions. Characteristics of control include, but are not limited to:
 1. Authority to sign bids and contracts;
 2. Decisions in price negotiations;
 3. Incurring liabilities for the firm;
 4. Final staffing decisions;
 5. Policy-making; and
 6. General company management decisions.
 - iv. Only those firms performing a useful business function according to custom and practice in the industry are qualified as MBEs. Acting merely as a passive conduit of funds to some other firm where such activity is unnecessary to accomplish the project does not constitute a "useful business function according to custom and practice in the industry." The purpose of this approach is to discourage the use of MBE "fronts" and limit the creation of an artificial supplier and broker marketplace.
2. Women's Business Enterprise (WBE) is a business which is certified as such by a State or Federal agency, or which meets the following definition:
- "A women's business enterprise is an independent business concern which is at least 51 percent owned by a woman or women, who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or otherwise qualified WBE which is 51 percent owned by a married woman in a community property State will not be disqualified because her husband has a 50 percent interest in her share. Similarly, a business which is 51 percent owned by a married man and 49 percent owned by an unmarried woman will not become a qualified WBE by virtue of his wife's 50 percent interest in his share of the business."
- As in the case of a MBE, only United States citizens will be deemed to be WBEs. Similar to the MBE criteria, WBE should meet the criteria cited in subparagraphs C.1.c.(2), (3), and (4).
3. Fair Share or Fair Share Objective A fair share or a fair share objective is an amount of funds reasonably commensurate with the total project funding and the availability of qualified MBEs and WBEs, taking into account experience on EPA-funded projects and other comparable projects in the area. A fair share objective does not constitute an absolute requirement, but a commitment on the part of the bidder to exercise good faith *efforts* as defined in this section to use MBEs and WBEs to achieve the fair share objective.
 4. Small Business (SBE). Any business entity, including its affiliates, that is independently owned and operated, and not dominant in its field of operations in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards set forth in 13 CFR Part 121.
 5. Small Business in a Rural Area. A small business in a rural area (SBRA) is a business entity meeting the definition of a small business, and is located and conducts its principal operations in a geographical area (county) listed in the Small Business Administration's Listing of Non-Metropolitan Counties by State.
 6. Recipient. A party receiving SRF financial assistance.
 7. Project. The work financed through an SRF loan.
 8. Bidder. A party seeking to obtain a contract with a recipient through a competitive, advertised, sealed bid process.
 9. Offeror. A party seeking to obtain a contract with a recipient through a negotiated procurement process.

10. Prime Contractor. A party that has obtained a contract with a recipient through a competitive, advertised, sealed bid process.
11. Good Faith Efforts. Good faith efforts by a recipient, prime contractor, and/or bidder/offeror means efforts to attract and utilize SBEs, MBEs, and W BEs (DBEs) primarily through outreach, recruitment, and race/gender neutral activities. The following are examples of activities to assist recipients, prime contractors and/or bidders/offerors to comply with good faith efforts.
- a. Include qualified SBEs, MBEs, and W BEs on solicitation lists.
 - i. Maintain and update a listing of qualified SBEs, MBEs, and W BEs and SBRA that can be solicited for supplies, construction and/or services.
 - ii. Provide listings to all interested parties who requested copies of the bidding or proposing documents.
 - iii. Contact appropriate sources within your geographic area and State to identify qualified MBEs and WBEs for placement on your minority and women's business listings.
 - iv. Utilize other MBE/WBE listings such as those of the State's Minority Business Office, the Small Business Administration, Minority Business Development Agency, US EPA- Office of Small and Disadvantaged Business Utilization (OSDBU) and the Department of Transportation.
 - v. Have the State environmental agency personnel review this solicitation list.
 - b. Ensure that SBEs, MBEs, and WBEs are solicited.
 - i. Conduct meetings, conferences, and follow-ups with SBEs, MBEs, W BEs, and SBRA, small, minority and/or women's business associations, minority media, etc., to inform these groups of opportunities to provide supplies, services, and construction.
 - ii. MBE utilization is facilitated if the recipient or prime contractor advertises through the minority media. Such advertisements may include, but are not limited to, contracting and subcontracting opportunities, hiring and employment, or any other matter related to the project.
 - iii. Conduct pre bid, pre-solicitation, and post-award conferences to ensure that consultants, suppliers, and builders solicit SBEs, MBEs, WBEs, and SBRA.
 - iv. Provide bidders and offerors with listings of qualified SBEs, MBEs, W BEs, and SBRA and establish that a fair share of contracts/procurements should be awarded to these groups.
 - v. Advertise in general circulation, trade publications, State agency publications of identified source, minority or women's business focused media, etc., concerning contracting opportunities on your projects. Maintain a list of minority or women's business-focused publications that may be utilized to solicit MBEs or WBEs.
 - vi. Provide interested SBEs, MBEs, W BEs, or SBRA with adequate information about plans, specifications, timing and other requirements of the proposed projects.
 - vii. Provide SBE, SBRA, MBE or WBE trade organizations with succinct summaries of solicitations.
 - viii. Notify SBEs, MBEs, WBEs, or SBRA of future procurement opportunities so that they may establish bidding solicitations and procurement plans.
 - c. Make information on forthcoming opportunities available to DBEs and arrange time frames and establish delivery schedules, where requirements of the work permit, which will encourage participation by SBEs, MBEs, W BEs and SBRA.
 - i. Consider lead times and scheduling requirements often needed by SBE, MBE, WBE or SBRA participation.
 - ii. Develop realistic delivery schedules which may provide for greater SBE, MBE, WBE or SBRA participation.
 - iii. Whenever possible, post solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date
 - d. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs; including dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation of SBEs, MBEs, W BEs and SBRA.
 - i. Perform an analysis to identify portions of work that can be divided and performed by qualified SBEs, MBEs, W BEs and SBRA.
 - ii. Scrutinize the elements of the total project to develop economically feasible units of work that are within the bonding range of SBEs, MBEs, W BEs and SBRA.

- iii. Analyze bid packages for compliance with the good faith efforts to afford SBEs, MBEs, WBEs and SBRA's maximum participation.
- iv. Encourage contracting with a consortium of SBEs, MBEs, W BEs, and SBRA's when a contract is too large for one of these firms to handle individually
- e. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the US Department of Commerce, as appropriate.
 - i. Use the services of outreach programs sponsored by the Minority Business Development Agency and/or the Small Business Administration to recruit bona fide firms for placement on SBEs', MBEs', W BEs', or SBRA's' bidders lists to assist these firms in the development of bid packaging.
 - ii. Seek out Minority Business Development Centers (MBDCs) to assist recipients and prime contractors in identifying MBEs for potential work opportunities on this project.
- f. If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs a. through e. of this section.

D. ADDITIONAL CONTRACT PROVISIONS

- 1. The prime contractor must pay its subcontractors for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the owner.
- 2. The prime contractor must notify the owner in writing prior to any termination of a DBE subcontractor for convenience.
- 3. If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six good faith efforts if soliciting a replacement subcontractor, even if the fair share objectives have already been achieved.

E. REPORTING

- 1. Bidders/offerors shall demonstrate compliance with "good faith" efforts in order to be deemed responsible. Efforts could include maintaining phone/mail logs (see attached MBE/WBE Subcontractor Solicitation Sheet), submitting proof of DBE solicitation advertisements, etc. The owner may specify other methods of demonstrating compliance.
- 2. Documentation of a "good faith" effort should be submitted with the bid, or within seven (7) calendar days of the bid opening.

MBE/WBE SUBCONTRACTOR SOLICITATION INFORMATION						
Name, Address & Phone No. of Subcontractor Contacted	Date Request for Quote Sent	Description of Work Offered	Date of Phone Follow-up & Person Contacted	Amount of Quote or Reason for Not Quoting*	Quote Accepted? If not, list reason for rejection	Indicate MBE, WBE, or other Subcontractor

* - Use additional sheets if necessary.

The undersigned hereby certifies that the above information is true and correct:

Contractor: _____

By: _____
 Signature

Date: _____