



CITY OF PHOENIX, ARIZONA  
OFFICE OF THE CITY ENGINEER  
DESIGN AND CONSTRUCTION PROCUREMENT

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**REQUEST FOR QUALIFICATIONS**

**WATER MAIN REPLACEMENT  
AREA BOUNDED BY:  
MOUNTAIN VIEW ROAD TO PEORIA AVENUE  
AND 19<sup>TH</sup> AVENUE TO 15<sup>TH</sup> AVENUE  
CONSTRUCTION ADMINISTRATION  
AND INSPECTION SERVICES  
WS85509031 (WIFA)**

**PROCUREPHX PRODUCT CATEGORY CODE 925000000  
RFx 6000001689**

# REQUEST FOR QUALIFICATIONS

The City of Phoenix is seeking a qualified consultant team to provide construction administration and inspection services for a Water Main Replacement project. This project site is located at the area bounded by Mountain View Road to Peoria Avenue and 19<sup>th</sup> Avenue to 15<sup>th</sup> Avenue.

This project will utilize federal funds and is subject to the requirements of 49 Code of Federal Regulations Part 26 and the U.S. Department of Transportation DBE Program. Participation in the Disadvantaged Business Enterprise Program is highly encouraged.

## **SECTION I – PROJECT DESCRIPTION**

Services will include construction administration and inspection (CA&I) for the installation of approximately 9,000 LF of Main (500 LF of 4" Main, 20,700 LF of 6" Main, 2,600 LF of 8" Main, 5,200 LF of 12" Main), 45 fire hydrants, 20 Cut & Plugs and 520 Services.

## **SECTION II – SCOPE OF WORK**

The CA&I Services scope for this project includes, but is not limited to:

- Provide on-site inspection and review of work to ensure the quality of the executed work and verify the work is in accordance with the construction documents and specifications.
- Assist the Contractor in obtaining permits and approvals for work.
- Provide oversight to ensure protection against defects and deficiencies in the work of Contractor and its subs.
- Confirm Contractor's work progress and quantities of work completed are on schedule and meet standards.
- Review Contractor cost proposals, submittals, shop drawings, RFIs, payment applications, change orders, and other documents as directed by the City.
- Certify Contractor payment applications.
- Conduct a pre-construction meeting and other project-related progress meetings.
- Administer the construction schedule.
- Keep City informed of project status and issues.
- Issue interpretations and clarifications to the Contractor.
- Conduct substantial and final completion walks.
- Prepare a punch list of corrective work to be performed by the Contractor. Perform re-inspection of work.
- Perform warranty walk and develop a list of repairs if necessary. Perform an inspection on all repairs completed.
- Track, compile, and categorize project documentation, including correspondence, meeting minutes, schedules, photographs, RFIs, submittals, and inspection reports. Deliver documentation on a flash drive to the City Project Manager following completion of the project.
- Prepare and maintain as-builts.
- Provide public information services.
- Provide data from construction to update the Computerized Maintenance Management System per the direction of the City's Water Asset Management Team.
- Other services as required to support the successful completion of the work and the City's interests.

Use of UNIFIER, an Application Service Provider (ASP) web-based project management database, may be required. The following information provides a guideline for utilization. Any questions related to the requirements of UNIFIER should be directed to the Project Manager.

- The Consultant will be required to maintain all project records in electronic format.
- The City provides an ASP web-based project management database which the Consultant will be required to utilize in the fulfillment of the contract requirements.

- The Consultant shall provide a computerized networked office platform with broadband internet connectivity.
- UNIFIER training will be provided through the City of Phoenix to firms under contract.

### **SECTION III - PRE-SUBMITTAL MEETING**

A pre-submittal meeting will be held at 1:00 p.m. on Tuesday, November 12, 2024, at 200 W. Washington Street, City Hall Conference Room 8 East. At this meeting, City staff will discuss the scope of work, general project requirements, and respond to questions from the attendees. It is strongly recommended that interested consultants attend the pre-submittal meeting. Inquiries regarding the project scope outside of this pre-submittal meeting must be directed to the Contracts Specialist.

### **SECTION IV - STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA**

A Firm will be selected through a qualifications-based selection process based on the criteria below. Sub-criteria are listed in order of importance in relation to project services. City of Phoenix project experience is not required.

#### **A. Construction Administration and Inspection Experience of the Prime Firm (maximum 250 points)**

Describe the experience and qualifications of the prime firm in providing CA&I services for similar projects. Identify projects the submitting firm has completed. Include assigned CA&I personnel if different from personnel performing design services. For each project listed, provide:

1. Description of the project including scope and project owner
2. Role of the firm and explain how this relates to the services being solicited
3. Project's original contract value, final contract value, and reason for variance
4. Project's start date and completion date

#### **B. Construction Administration and Inspection Experience of Key Personnel and Subconsultants (maximum 250 points)**

Describe the experience and qualifications of the project team expected to be assigned to this project in providing CA&I services for similar projects. For each key person identified, list their length of time with the firm. List each key person's role in the projects provided. If a project selected for a key person is the same as one selected for the firm, provide just the project name and the role of the key person. Include assigned CA&I personnel if different from personnel performing design services. For each project listed, provide:

1. Description of the project including scope and project owner
2. Role of the team or team member and explain how this relates to the services being solicited
3. Project's original contract value, final contract value, and reason for variance
4. Project's start date and completion date

#### **C. Project Understanding and Approach (maximum 350 points)**

Describe your firm's understanding of the City's need for this project, including important considerations such as project issues and challenges. Describe the team's approach to the project, including important considerations such as scope, schedule, and budget.

#### **D. Staffing Information for Key Personnel (maximum 150 points)**

Provide the following:

1. Team's availability and commitment to the project, including subconsultants
2. Team's plan to maintain continuity of the proposed services

3. Organization chart showing key personnel, current professional licenses or certifications, and assigned roles for CA&I Services for the project
4. Identify the location of the lead firm's principal office and the home office location of key staff on this project

**G. Reference Check (maximum 21 points\*)**

**Use the form provided** (Exhibit A) to obtain at least three references. It is preferred no more than one be a City of Phoenix project. If your firm has not completed prior projects with other agencies, you will not be penalized. It is recommended there be references outside the City of Phoenix.

\*These points are in addition to the (1,000) points for the SOQ.

**SECTION V - SUBMITTAL REQUIREMENTS**

**New Electronic Submittal Process:** Firms interested in this project must submit a Statement of Qualifications (SOQ) via email to [julie.b.smith@phoenix.gov](mailto:julie.b.smith@phoenix.gov).

Submittal requirements are as follows:

- Vendor Information:** All firms must be registered in the City's Vendor Management System prior to submitting a proposal. For new firms, the City will send an email to your firm with a vendor number within two business days of submitting the request. The vendor number should be included on the cover of the SOQ. Information on how to register with the City is available at:

<https://www.phoenix.gov/financesite/Pages/EProc-help.aspx>

**If your firm is already registered with the City of Phoenix's ProcurePHX system, please visit <https://eprocmnt.phoenix.gov/irj/portal> to login and access the electronic solicitation.**

- The product category code for this RFQ is 925000000 and the RFX number is 600001689.**
- Submittals:**

- Submittals must be emailed to [julie.b.smith@phoenix.gov](mailto:julie.b.smith@phoenix.gov) by the submittal due date and time.
- Submit only one SOQ electronically, in .PDF format only, addressing all evaluation criteria. No hard copies will be accepted.
- Clearly display the firm name, vendor number, project title, and project number on the cover of the SOQ.
- A maximum of **10 pages** is permitted to address all content in the SOQ submittal. **(Maximum page limit includes evaluation criteria and all additional content. It does not include information sheet.)**
- Submit electronically the SOQs by **12:00 noon, Phoenix time, on Friday, December 6, 2024.**
- Upload one complete version of the SOQ addressing all the criteria. Upload format is .PDF.
- Page size must meet requirements of 8½" x 11".
- Font size must not be less than 10 point.
- Content count:
  - ✓ Each side of a page containing evaluation criteria and additional content will be counted toward the maximum page limit noted above.
  - ✓ Pages that have project photos, charts and/or graphs will be counted towards the maximum page limit noted above.
  - ✓ Front and back covers, information sheet, Table of Contents pages, and divider (tab) pages **will NOT** be counted toward the maximum page limit noted above, unless they include evaluation criteria and additional content that could be considered by the selection panel.

- Information Sheet:** Provide an information sheet that includes project title, project number, RFX number, **legal firm name (not a trade name)**, address, phone number, vendor number, and the name,

title, email address and signature of your contact person for the project. Do not include any additional information.

- Evaluation Criteria:** Address the SOQ evaluation criteria.
- Additional Content:** Resumes and other information may be included (*content shall be included within the permitted maximum page limit*).
- Disadvantaged Business Enterprise (DBE) Attachments:** Include completed DBE Clause Exhibit B (Form EO1) and supporting documentation, in a separate PDF attachment along with your SOQ submittal (DBE attachments do NOT count towards maximum page count).

**Note: All pages exceeding the specified maximum page limit will be removed from the submittal and not considered in evaluating a submitted SOQ.**

## **SECTION VI – GROUNDS FOR DISQUALIFICATION**

The following **will be grounds for disqualification**, and will be strictly enforced:

- Emailing the documentation to the wrong email address.
- Violating the “Contact with City Employees” policy contained in this RFQ.
- Not submitting DBE Form EO1 and/or supporting documentation (Exhibit B) with SOQ. Note: Submit as a separate PDF.

## **SECTION VII - SELECTION PROCESS AND SCHEDULE**

Interested firms will submit a SOQ. The firm will be selected through a qualifications-based selection process. A selection panel will evaluate each SOQ per the criteria set forth in Section IV above.

The City will select a firm based on the SOQs received; no formal interviews will be conducted. The City may conduct a due diligence review on the firm receiving the highest evaluation.

The City expects to create a final list of at least one, but not more than three firms for this project. The City will enter into negotiations with the selected firm and execute a contract upon completion of negotiation of fees, contract terms, and City Council approval.

The following tentative schedule has been prepared for this project.

Pre-submittal meeting	November 12, 2024
SOQs due	December 6, 2024
Scope Meeting	January 2025

If the City is unsuccessful in negotiating a contract with the best-qualified firm, the City may then negotiate with the next most qualified firm until a contract is executed, or the City may decide to terminate the selection process. Once a contract is executed with the successful firm, the procurement is complete.

All submitting firms will be notified of selection outcome for this project. The status of a selection on this project will be posted on the City of Phoenix’s “Tabulations, Awards, and Recommendations” website:

<http://solicitations.phoenix.gov/awards>

## **SECTION VIII - FEDERAL REQUIREMENTS**

See Exhibit C for the Water Infrastructure Finance Authority of Arizona requirements.

## **SECTION IX – GENERAL INFORMATION**

**Citywide Capital Improvement Projects.** Consulting and contractor services supporting the City's Capital Improvement Projects are procured under the authority of the City Engineer, currently located within the Street Transportation Department. Design and Construction Procurement coordinates the citywide consulting and construction contracting procurement processes.

**Changes to Request for Qualifications.** *Any changes to this Request for Qualifications (RFQ) will be in the form of a Notification.* The City of Phoenix shall not be held responsible for any oral instructions. Notifications are available on both the Current Opportunities and ProcurePHX webpage.

**It shall be the responsibility of the registered RFQ holder to determine, prior to the submittal of the SOQ, if a Notification has been issued.** Registered RFQ holders may refer to the web page or call the Contracts Specialist (listed below) to ascertain if a Notification has been issued for this project.

**Alternate Format.** For more information or a copy of this publication in an alternate format, contact the Contracts Specialist (listed below) - Voice or TTY 711. Requests will only be honored if made within the first week of the advertising period.

**Release of Project Information/Public Records Request.** The City shall provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to release information to the public must receive prior written approval from the City. To submit a Public Records Request, visit [phoenix.gov/prr](http://phoenix.gov/prr).

**City Rights.** The City of Phoenix reserves the right to reject any or all Statements of Qualifications, to waive any informality or irregularity in any SOQs received, and to be the sole judge of the merits of the respective Statements of Qualifications received.

**Contact with City Employees.** This policy is intended to create a level playing field for all Proposers, assure that contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY WILL BE DISQUALIFIED.**

Beginning on the date the RFQ is issued and until the date the contract is awarded or the RFQ withdrawn, all persons or entities that respond to the RFQ, including their authorized employees, agents, representatives, proposed partner(s), subcontractor(s), joint venture(s), member(s), or any of their lobbyists or attorneys (collectively the Proposer), will refrain from any direct or indirect contact with any person (other than the designated Contract Specialist) who may play a part in the selection process, including members of the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department heads, the Mayor and other members of the Phoenix City Council. As long as the RFQ solicitation is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to this RFQ solicitation with City staff.

Commencing on the date and time a solicitation is published, potential or actual proposers (including their representatives) will only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under the Arizona Revised Statutes, until the resulting contract(s) are awarded or all offers or responses are rejected and the solicitation is cancelled without any announcement by the procurement officer of the City's intent to reissue the same or a similar solicitation.

Proposers may discuss their proposal or the RFQ solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Contract Specialist (listed below), conducted in person at 200 W. Washington, Phoenix, Arizona 85003, and are posted as open meetings with the City Clerk at least twenty-four (24) hours prior to the scheduled meetings. The City Clerk

will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

**Conflict of Interest.** The City reserves the right to disqualify any Proposer on the basis of any real or apparent conflict of interest that is disclosed by the proposal submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Proposer submitting a proposal herein waves any right to object now or at any future time, before any body or agency, including but not limited to, the City Council of the City of Phoenix or any court.

**Protest Procedures.** Firms responding to disqualification, or a procurement outcome are referred to the Code of the City of Phoenix Chapter 2, Article XII, Section 2-187 to 2-190.4, which governs protest procedures utilized throughout the selection process. The procedures may be reviewed through the City of Phoenix website at:

<http://www.codepublishing.com/az/phoenix/>

A copy of the Protest Policy is also available online at:

<https://www.phoenix.gov/streets/procurement-opportunities>

**Questions** - Questions pertaining to this selection process or contract issues should be directed to the Contracts Specialist, Julie B. Smith at (602) 534-2418 or email [julie.b.smith@phoenix.gov](mailto:julie.b.smith@phoenix.gov).

**EXHIBIT A**  
**CONSULTANT REFERENCE CHECK INSTRUCTIONS, FORM, AND SAMPLE LETTER**

The attached Consultant Performance Evaluation Form is to be provided to the agencies or entities for which your firm has recently provided services relevant to those requested for this project. Provide the evaluation form to the Owner, or the Owner's representative directly responsible for oversight of the project to complete and submit to the email box listed below.

The first three references submitted will be accepted and the scores utilized as part of the evaluation process. Each reference check is worth up to 7 points for a total of up to 21 points available.

The form is to be completed by the agency or entity and uploaded to the (email box) at: [soq.referencechecks@phoenix.gov](mailto:soq.referencechecks@phoenix.gov)

The procurement identifier is:

6000001689

Attention: Julie B. Smith

Also attached is a sample performance evaluation cover letter that may be used when sending the reference check request.



## Sample Consultant Performance Evaluation Cover Letter

Sample Cover Letter  
Contact Name  
Address of Reference

(Your Name) is responding to a Request for Qualifications (RFQ) from the City of Phoenix Office of the City Engineer's Design and Construction Procurement section.

The City is requesting reference information related to our past performance. As a part of the response submittal process, the City is requesting performance evaluations from agencies that our firm has performed services for either in the past or is currently receiving services.

I would appreciate your cooperation in completing the attached Consultant Performance Evaluation form and return by email the completed form by 12:00 pm Phoenix time on **December 6, 2024** to:

[soq.referencechecks@phoenix.gov](mailto:soq.referencechecks@phoenix.gov)

**Reference in Subject Line: RFX #6000001689**

For questions, contact Julie Smith, Contracts Specialist at 602-534-2418.

Failure to submit the Consultant Performance Evaluation form by the above date will have a negative impact on the proposal we submit for this service. Your cooperation in submitting this form by this date is appreciated.

If you have any questions regarding this request, please contact (your name) at (your telephone number).

Sincerely,

## INSTRUCTIONS FOR COMPLETING CONSULTANT PERFORMANCE EVALUATION

Evaluate the consultant's contract performance in each of the rating areas listed below. On the Consultant Performance Evaluation form, circle the rating from 1 to 4 that most closely matches your evaluation of the consultant's performance. Comments are not required but appreciated. **Every rating area must be scored.**

The Design and Construction Procurement section will use the information from this form to evaluate firms competing for contract award. **This completed form will become public record and upon request, will be released to the consultant or any other entity.**

Please submit the completed form to the address indicated on the bottom of the Consultant Performance Evaluation form. Thank you for your time and your cooperation.

**Water Main Replacement**  
**Area Bounded By:**  
**Mountain View Road to Peoria Avenue and 19<sup>th</sup> Avenue to 15<sup>th</sup> Avenue**  
**Construction Administration and Inspection Services**  
**RFx: 6000001689**

**CONSULTANT PERFORMANCE EVALUATION FOR \_\_\_\_\_**  
(firm name)

In the box below, provide the project title, contracted services provided by the firm, and start and completion date of services. This form is to be completed by the Owner, or the Owner's representative directly responsible for oversight of the project. The project services evaluated must be relevant to the services of this project. Every rating area must be scored.

**RATINGS:** Summarize the Consultant's performance and **circle the number** below that corresponds to the performance rating for each category. Please see the rating scale.

1 = Unsatisfactory (.25 pt.); 2 = Poor (.50 pt.); 3 = Good (.75 pt.); 4 = Excellent (1.0 pt.)

HOW WOULD YOU RANK THE BUSINESS RELATIONSHIP BETWEEN THE OWNER AND THE FIRM?	4 3 2 1	Comments:
WAS THE TEAM PRESENTED IN THE PROPOSAL THE TEAM THAT WORKED ON THE PROJECT TO COMPLETION?	4 3 2 1	Comments:
WAS STAFF PROACTIVE IN SOLVING PROBLEMS THAT MAY HAVE OCCURRED ON THE PROJECT?	4 3 2 1	Comments:
WAS THE CONTRACTED SCOPE OF SERVICES COMPLETED ON TIME AND WITHIN BUDGET?	4 3 2 1	Comments:
HOW WOULD YOU RATE THE QUALITY OF WORK PERFORMED BY THIS FIRM ON YOUR PROJECT?	4 3 2 1	Comments:

DID THE FIRM RECOMMEND EFFICIENCIES OR PROVIDE INNOVATIVE IDEAS OR SUGGESTIONS?	4 3 2 1	Comments:
WOULD YOU BE WILLING TO CONTRACT WITH THIS FIRM AGAIN? (YES = 1 point)	YES  NO	Comments:
TOTAL SCORE		(MAXIMUM 7 POINTS)

Reference Evaluation Provided By:

Name and Title: \_\_\_\_\_

Agency/Organization: \_\_\_\_\_

Date: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

**Email completed form by December 6, 2024 by 12:00 pm Phoenix time to:**

[soq.referencechecks@phoenix.gov](mailto:soq.referencechecks@phoenix.gov)

**\*EMAIL SUBJECT LINE SHOULD REFERENCE RFx NUMBER 6000001689.**

The document should reference the project number and firm for which the reference check is being submitted. If no project number is available, reference the service and firm for which the reference check is being submitted.

**EXHIBIT B**  
**DISADVANTAGED BUSINESS ENTERPRISE FORMS**

**(ATTACHED)**



## City of Phoenix

### Disadvantaged Business Enterprise Program

#### DBE –Engineering Contract Clause Race & Gender-Neutral – Non-Negotiated

**PROJECT #: WS85509031**

**CONTRACT #:**

**PROJECT NAME: WMR ABB: MOUNTAIN VIEW ROAD TO PEORIA AVE & 19TH AVE TO 15TH AVE.**

Phoenix is one of the fastest growing, multicultural cities in the country and has shown a historical commitment to business diversity. The City and its partners strive to advance the economic growth of small businesses through its Disadvantaged Business Enterprise (DBE) Program.

The City of Phoenix DBE Program is managed and administered by the City's Equal Opportunity Department, Contract Compliance Division. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance, educational services, and networking.

#### **SECTION I. DEFINITIONS**

**Agency** means the City of Phoenix for purposes of this Contract.

**Arizona Unified Certification Program (AZUCP)** means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 Code of Federal Regulations (CFR) Part 26. The official DBE database containing eligible DBE firms certified by AZUCP can be accessed at: <https://utracs.azdot.gov>. The certification system is called the Arizona Unified Transportation Registration and Certification System (AZ UTRACS).

**Business to Government Now (B2G)** means the web-based certification and compliance system used to track and monitor DBE and Small Business Participation. The B2G system can be accessed at: <https://phoenix.diversitycompliance.com>

**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including construction and professional services) and the buyer to pay for them.

**DBE Compliance Specialist** means an Agency employee responsible for compliance with this DBE Contract Clause.

**EOD** means the City of Phoenix Equal Opportunity Department.

**Joint Venture (JV)** means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this Contract. The resources, asset, and labor of the participants must be combined in an effort to accrue profit.

**Outreach Efforts** means the diligent and good faith efforts demonstrated by a Bidder to solicit participation from interested and qualified DBEs and other Small Businesses. Bidder shall identify and document potential business opportunities for DBEs and other Small Businesses, describe what efforts were undertaken to solicit DBE and Small Business participation, disclose results of negotiations with Small Businesses, and communicate and record Bidder's selection decisions relating to DBE and Small Business participants.

#### **Equal Opportunity Department**

200 W. Washington St., 15th Floor, Phoenix, AZ 85003  
602-262-7716/Voice | 602-534-1124/Fax | 602-534-1557/TTY



## City of Phoenix

### Disadvantaged Business Enterprise Program

**Disadvantaged Business Enterprise (DBE)** means a Small Business Concern that has successfully completed the DBE certification process and has been granted DBE status by an AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

**Commercially Useful Function** means that a DBE is responsible for executing the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE is presumed not to be performing a Commercially Useful Function.

**Goods and Services Providers** are firms that provide goods and services that represent a Commercially Useful Function directly to Transit as a DBE or Small Business.

**Manufacturer** means a firm that owns; operates or maintains a factory or establishment that produces on the premises the components, materials, or supplies obtained by the recipient, successful bidder, or Transit Vehicle Manufacturer.

**Regular dealer/broker** is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or released to the public in the usual course of business.

**Supplier** means a firm that engages in, as its principal business, the purchase and sale of material or supplies required for the performance of a contract. The firm must own, operate, and maintain a store, warehouse or other establishment where the supplies are bought, kept in stock, and regularly sold to the public in the usual course of business.

**Small Business Concern (SBC)** means, with respect to firms seeking to participate in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which Small Business Concern does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b). “Small Business” and “Small Business Concern” are used interchangeably in this DBE Contract Clause.

**Small Business Enterprise (SBE)** means a small business that has been determined to meet the requirements for SBE certification with the City of Phoenix and whose certification is in force at the time of the award of business by the City. A directory of currently certified SBE firms is located at <https://phoenix.diversitycompliance.com>.

**Race- and Gender-Neutral (RGN) Measures** means a measure or program that is or can be used to assist all Small Businesses.

**Subcontract** means a contract at any tier below the prime contract, including a purchase order.

**Subcontractor** means an individual, partnership, JV, corporation or firm that holds a contract at any tier below the prime contract, including a vendor under a purchase order.

**Submitter** means an individual, partnership, JV, contractor, corporation, or firm that tenders a submittal to the Agency to perform services requested by a solicitation or procurement. The submittal may be direct or through an authorized representative. (Submitter is inclusive of the terms: *Bidder, Offeror, Proposer, Respondent*, etc.).

#### Equal Opportunity Department

200 W. Washington St., 15th Floor, Phoenix, AZ 85003  
602-262-7716/Voice | 602-534-1124/Fax | 602-534-1557/TTY



## City of Phoenix

### Disadvantaged Business Enterprise Program

**Responsive Submitter** means a firm that has met the minimum program requirements as outlined in the solicitation and due at the time of submittal.

**Successful Submitter** means a firm that has been awarded the contract by the Agency to perform services or furnish supplies requested by a solicitation or procurement.

**Responsible Submitter** means a firm that has been selected to continue in the procurement process by the Agency.

**Transit Vehicle Manufacturers (TVMs)** means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

**Transit Vehicle Manufacturers Goals** for FTA recipients each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26.49.

## SECTION II. GENERAL REQUIREMENTS

### **A. Applicable Federal Regulations**

This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving a DBE. For this reason, the Successful Bidder shall provide all relevant information to enable the required reporting.

### **B. DBE Participation**

For this solicitation, the Agency has *not* established a race- or gender-conscious DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-neutral measures to facilitate participation by DBEs and Small Businesses. The Agency *encourages* each Bidder to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Bidder might otherwise perform with its own forces.

### **C. Small Business Participation**

The Agency will track the participation of all approved businesses throughout the life of this contract. The Agency will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at [www.ecfr.gov](http://www.ecfr.gov) (49 CFR Part 26.39).

### **D. DBE Certification**

*Only* firms (1) certified by the Agency or another AZUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from RGN measures on this Contract. This DBE determination affects the Agency’s tracking and reporting obligations to USDOT.

### Equal Opportunity Department

200 W. Washington St., 15th Floor, Phoenix, AZ 85003  
602-262-7716/Voice | 602-534-1124/Fax | 602-534-1557/TTY





## City of Phoenix

### Disadvantaged Business Enterprise Program

#### **E. Civil Rights Assurances.**

As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Bidder, and each Subcontract signed by the Successful Bidder and a Subcontractor, must include the following assurance verbatim:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 26 in the award and administration of USDOT-assisted contracts. 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 such other remedy as the City of Phoenix deems appropriate.”

Note: For purposes of the required Contract and Subcontract language above, Successful Bidder is the “contractor” awarded the contract.

### **SECTION III. REQUIRED OUTREACH EFFORTS**

The Agency has implemented outreach requirements for this Contract. Specifically, Bidders shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal. If a Bidder fails to conduct these Outreach Efforts or fails to submit the required documentation of Bidder’s Outreach Efforts as indicated in Section IV, Parts A and B below, the Agency may determine that the Bidder is nonresponsive. A determination of non-responsiveness *disqualifies* Bidder from further consideration for the Contract award.

### **SECTION IV. BID REQUIREMENTS**

#### **A. Documentation due at time of bid:**

All required Outreach Efforts documentation due with the bid must be submitted in a separate sealed envelope with the bid submittal.

##### **1. Form EO2 (Outreach Efforts)**

Each Bidder shall submit Form EO2 with Columns A through D completed to document their diligent and earnest Outreach Efforts.

Each Bidder shall list in Form EO2 all Small Businesses contacted by Bidder in preparing its bid. Each Bidder shall also provide the following minimum information to document its Outreach Efforts. The DBE Compliance Specialist will consider this information to determine whether Bidder has demonstrated the required Outreach Efforts:

##### **a. Column A - Small Business Name and Contact Information**

Must list each business’s full legal name and contact information. Successful Bidder shall inquire to obtain the following: the number of its employees, number of years in business and its estimated range of annual gross receipts.

##### **b. Column B - Business Status**

Indicate the business status. Check all that apply, if known.

- The official DBE database containing eligible DBE and SBC firms can be accessed at: <https://utracs.azdot.gov>

### **Equal Opportunity Department**

200 W. Washington St., 15th Floor, Phoenix, AZ 85003  
602-262-7716/Voice | 602-534-1124/Fax | 602-534-1557/TTY



## City of Phoenix

### Disadvantaged Business Enterprise Program

- City of Phoenix SBE Certification Directory can be accessed at:  
<https://phoenix.diversitycompliance.com>

**c. Column C - Scope(s) of Work Solicited**

List the scope(s) of work solicited for which the small business was considered for participation in the proposal. The solicitation shall include a description of the scope(s) of work being requested.

**d. Column D - Solicitation Method**

Indicate the solicitation method by which each small business was contacted for your outreach efforts and provide supporting documentation. Supporting documentation must include a copy of the actual solicitation sent to Small Businesses. The solicitation may be in the form of letters or attachments to email, phone logs, newspapers and trade papers, outreach events, etc. If using a log as supporting documentation, it must include:

- List the Solicitation Method
- Name of Bidder's Representative
- Name of Company Contacted
- Name of Person Contacted
- Date and Time of Contact
- Details of the Communication

Each Bidder shall complete Columns A through D on Form EO2 in accordance with the following instructions:

1. Each Bidder shall actively contact Small Businesses for each scope of work or business opportunity selected for Outreach Efforts (**Columns A and C**).
2. Bidder's contacts with Small Businesses should occur well before the deadline for the bid to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Contract.
3. Bidder shall ask each firm to indicate the number of its employees (**Column A**).
4. For each Small Business's annual gross receipts, Bidder shall ask the firm to indicate the gross-receipts bracket into which it fits (e.g., less than \$500,000; \$500,000 – \$1 million; \$1 – 2 million; \$2 – 5 million; etc.) rather than requesting an exact figure (**Column A**).

**B. Documentation due within FIVE (5) CALENDAR DAYS of the Bid Deadline**

All required Outreach Efforts documentation is due within the five (5) calendar days of the bid deadline must be submitted in a sealed envelope.

**1. Form EO2 (Outreach Efforts)**

Each Bidder shall submit **Form EO2 with Columns E and F** completed to document its diligent, earnest Outreach Efforts.

**a. Column E - Selection Decision**

Indicate the Successful Bidders selection decision for each small business that responded to the solicitation.

*If selected, indicate the Dollar Value.*

*If not selected, provide an explanation why firm was NOT selected.*

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## City of Phoenix

### Disadvantaged Business Enterprise Program

#### b. **Column F - Method of Communication of Final Selection Outcome**

The Successful Bidder must notify the final selection outcome to all small businesses that responded. The supporting documentation for this notification may be in the form of an email, fax, letter, in person or a telephone log, etc. This documentation must show the following information regarding the final selection:

- List the Selection Outcome
- Name of Bidder's Representative
- Name of Company Contacted
- Name of Person Contacted
- Date and Time of Contact
- Details of the Communication

\*Successful Bidder shall provide supporting documentation that shows Bidder has communicated its final selection decisions and outcomes to all Small Businesses, including those not chosen to participate in this Contract.

#### 2. **Form EO2 Supporting Documentation**

Each Bidder shall complete and submit supporting documentation of its Outreach Efforts related to Form EO2 – as specifically related to Columns E & F.

- Within FIVE (5) Calendar Days of the Bid Deadline, Bidder shall submit all supporting documentation of Bidder's contacts with Small Businesses for each scope of work or business opportunity in regard to their Outreach Efforts.
- This documentation must include: (1) descriptions of scopes of work and business opportunities identified for Small Business participation, and (2) a copy of the actual solicitation sent to interested Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce.
- For all of the above documentation, if Bidder uses a blast e-mail or fax format, the documentation submitted must include a copy of the e-mail or fax, and Bidder must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Bidder shall document the date and time of the call and the names of the respective persons representing Bidder and the Small Business.
- Bidder shall submit documentation that establishes how Bidder communicated its selection decisions and outcomes to each Small Businesses **SELECTED OR NOT SELECTED** for this Contract. This documentation may be in the form of a letter, e-mail, or a telephone log and must show the name of the person contacted and date.
- For all of the above documentation, if Bidder uses an email blast or fax format, the documentation submitted must include a copy of the e-mail or fax, and Bidder must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Bidder shall document the date and time of the call and the names of the respective persons representing Bidder and the Small Business.

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## City of Phoenix

### Disadvantaged Business Enterprise Program

#### **3. Form EO3 (Small Business Utilization Commitment)**

Due within FIVE (5) CALENDAR DAYS of the Bid Deadline. Bidder shall complete, sign, date and submit Form EO3 within the five (5) calendar days of the bid deadline, EO3 commits Bidder to the Agency as follows:

- a. The firms indicated as "Selected" on Form EO2 – Small Business Outreach Efforts will participate in the Contract;
- b. Bidder will comply with the Race- and Gender-Neutral post-award requirements as stated in the DBE contract clause;
- c. Any and all changes or substitutions will be authorized by the Compliance Specialist before implementation; and
- d. The proposed total Small Business participation percentage is true and correct.

Bidder shall ensure that the dollar amount or percentages proposed for Small Business participation on Form EO2 equal the total percentage proposed in Form EO3.

#### **C. Failure to Meet Outreach Requirements**

The DBE Compliance Specialist will determine, in writing, whether the Bidder has satisfied all outreach requirements. If the DBE Compliance Specialist determines the Bidder failed to satisfy the outreach requirements, then the DBE Compliance Specialist may determine the bid is nonresponsive. A determination of non-responsiveness *disqualifies* Bidder from further consideration for the Contract award. The Agency shall send written notice to Bidder stating the basis for the DBE Compliance Specialist's decision.

#### **D. Administrative Reconsideration**

In the event the City determines the Bidder failed to submit required documentation to meet the Small Business Outreach Requirements, an opportunity for reconsideration of this determination will be provided. This opportunity for reconsideration will seek to obtain clarification of documentation submitted with the bid.

Within three business days of being informed by the City that the Bidder is not responsive based on insufficient demonstration and/or documentation of Outreach Efforts, the Bidder may submit its written request to:

**City of Phoenix Equal Opportunity Department  
Office of the Director  
200 W. Washington St., 15th Floor  
Phoenix, AZ 85003**

If the request for Administrative Reconsideration is not submitted within the allotted three business days, the non-responsive Bidder shall not utilize the DBE Program submittal requirements as the basis for its future protest.

As part of this reconsideration process, the Bidder will have an opportunity to provide written clarification or argument concerning the issue of whether it met the Outreach Requirements or

provided sufficient supporting documentation of this efforts at the time of bid. As the Disadvantaged Business Enterprise Liaison Officer (DBELO) for the City, The Equal Opportunity Director shall review solely the written clarification or argument, along with any document(s) originally submitted at the time of bid. No new or revised forms or supporting documentation will be reviewed for consideration.



## City of Phoenix

### Disadvantaged Business Enterprise Program

The DBELO or his designee will send the Bidder a written decision on the reconsideration, explaining the basis for finding that the Bidder did or did not meet the Small Business Outreach Requirements. The result of the DBE reconsideration process is not administratively appealable and cannot be escalated or included in any other protest not related to the DBE Program.

#### SECTION VI. POST-AWARD COMPLIANCE REQUIREMENTS

##### **A. Subcontracting Commitment**

The small business subcontractors identified and accepted in the Small Business Outreach documents must have an executed contract\* in place prior to the performance of work.

Successful Bidder shall submit to Agency, through the B2G system, all executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between Successful bidder and all subcontractors, upon execution throughout the life of this contract.

The Successful Bidder shall not terminate any approved DBE or Small Business Subcontracts, nor shall the Successful Bidder alter the scope of work or reduce the Subcontract amount, without the DBE Compliance Specialist's prior written approval. Any request to alter a DBE or Small Business Subcontract must be submitted in writing to the DBE Compliance Specialist before any change is made. If the Successful Bidder fails to do so, the Agency may declare Successful Bidder in breach of contract.

\*Executed contracts and all lower tier contracts must contain the required Civil Rights Assurances and Prompt Payment provisions.

##### **B. Post-Award Relief from Small Business Requirements**

After Contract award, the Agency will not grant relief from the proposed Small Business utilization except in extraordinary circumstances. The Successful Bidder's request to modify Small Business participation must be in writing to the DBE Compliance Specialist, which has final discretion and authority to determine if the request should be granted.

The Successful Bidder's waiver request must contain the amount of relief being sought, evidence demonstrating why the relief is necessary, and any additional relevant information the DBE Compliance Specialist should consider. The Successful Bidder shall include with the request all documentation of its attempts to subcontract with the Small Business and any other action taken to locate and solicit a replacement Small Business.

If an approved DBE allows its DBE status to expire or its DBE certification is removed during the course of the subcontract, the Agency will consider all work performed by the DBE under the original contract to count as DBE participation. No increased scopes of work negotiated after expiration or revocation of the DBE's certification may be counted. Likewise, any work performed under a Contract extension granted by the Agency may not be counted as DBE participation.

##### **C. Counting Small Business Participation**

The prime contractor may only count expenditures to AZUCP certified DBE subcontractors that perform a commercially useful function on the contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. A DBE subcontractor must perform a minimum of 30% of its subcontract value with its own

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## City of Phoenix

### Disadvantaged Business Enterprise Program

workforce and equipment before its participation can be counted. DBEs must manage and control the performance of its contract and not be dependent on the prime's personnel and equipment to complete its work. Scope(s) of work not covered in the DBE firm's certification description **will not** be counted as DBE participation.

#### Commercially Useful Function & Counting of DBE Trucking/Hauling:

**49 CFR Part 26.55 Section (d)** defines Commercially Useful Function and the counting of DBE participation Trucking/Hauling as follows:

- The DBE must be responsible for **the management and supervision of the entire trucking operation for which it is responsible on a particular contract**, and there cannot be a contrived arrangement for the purpose achieving DBE participation.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.
- Amounts paid for dump fees or materials being hauled/dumped cannot be counted as DBE participation.

#### Counting DBE certified Manufactures, Suppliers, and Brokers:

**49 CFR Part 26.55 Section (e)** permits the counting of expenditures with DBEs for materials or supplies toward DBE participation as provided in the following:

- If the materials or supplies are obtained from a **DBE manufacturer**, count 100 percent of the cost of the materials or supplies toward DBE participation,
- If the materials or supplies are purchased from a **DBE regular dealer (supplier)**, count 60 percent of the cost of the materials or supplies toward DBE participation.
- If materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, **(broker or manufacturer's rep.)** count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies toward DBE participation.

If an approved DBE allows its DBE certification to expire, or the certification is revoked during the course of the Subcontract, the Agency will consider all work performed by the DBE under the original contract to count as DBE participation. No increased scope of work negotiated after expiration or revocation of the DBE's certification may be counted. Any work performed under a Contract extension granted by the Agency may not be counted as DBE participation.

#### **D. Small Business Substitutions or Terminations**

As set forth in 49 CFR Section 26.53 (f)(1)(2)(3) after Contract award, the Agency will not allow substitution or termination from the proposed Small Business utilization except in

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## City of Phoenix

### Disadvantaged Business Enterprise Program

extraordinary circumstances. The Successful Bidder's request to modify Small Business participation must be in writing to the Phoenix DBE Compliance Specialist.

Successful Bidder's written request must set forth the amount of substitution or why termination is sought, evidence that demonstrates why it is necessary, and any additional relevant information that the Phoenix DBE Compliance Specialist should consider. The Successful Bidder shall include with the request all documentation of Bidder's attempts to subcontract with the Small Business and any other action taken to locate and solicit a replacement Small Business.

If the Small Business was approved by the Agency, the Phoenix DBE Compliance Specialist will consider whether or not the Successful Bidder has exercised diligent and good-faith efforts to find another Small Business as a replacement. The Successful Bidder shall notify the Phoenix DBE Compliance Specialist in writing of the necessity to substitute a Small Business and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a Small Business may not occur before the Phoenix DBE Compliance Specialist's written approval has been obtained.

#### **E. Prompt Payment of Subcontractors**

The prompt payment clause shall be included in every contract and subcontract.

Per A.R.S. § 32-1129.01 the Successful Bidder must promptly pay its subcontractors, subconsultants, or suppliers **within seven (7) calendar days**. If the Successful Bidder diverts any payment received for a DBE's,

Small Business's, or other Subcontractor's work performed on the Contract or fails to reasonably account for the application or use of the payment, the Agency may declare the Successful Bidder in breach of contract.

Under the prompt-payment provisions of 49 CFR Part 26, the Successful Bidder must ensure prompt and full release of retentions to Subcontractors and suppliers when their scope of work is complete, and the Agency has paid Successful Bidder for the work. The Successful Bidder shall pay each Subcontractor's and supplier's retention no later than 30 days after the Agency has paid for the scope(s) of work, regardless if there's outstanding retention held against the Successful Bidder. If the Agency reduces the Successful Bidder's retention, the Successful Bidder shall correspondingly reduce the retentions of Subcontractors and suppliers that have performed satisfactory work.

Nothing in this section prevents the Successful Bidder from enforcing its Subcontract with a Subcontractor or supplier for defective work, late performance, and other claims arising under the Subcontract.

#### **F. Remedies**

If the Successful Bidder fails to comply with these contract provisions and the requirements set forth in 49 CFR 26.101 and 26.103, the Agency may take any one or more of the following actions:

1. Withhold future payments, including retention, until the Successful Submitter is determined to be in compliance;
2. Cancel the Contract.

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## City of Phoenix

### Disadvantaged Business Enterprise Program

#### SECTION VII. RECORDS & REPORTING REQUIREMENTS

##### **A. Records**

During performance of the Contract, the Successful Bidder shall keep all records necessary to document Small Business participation. The Successful Bidder shall provide the records to the Agency within 72 hours of the Agency's request and at final completion of the Contract. The Agency will prescribe the form, manner, and content of reports. The required records may include but not limited to:

1. A complete listing of all Subcontractors and suppliers on the project;
2. Each Subcontractor's and supplier's scope performed;
3. The dollar value of all subcontracting work, services, and procurement;
4. Copies of all executed Subcontracts, purchase orders, and invoices; and
5. Copies of all payment documentation and Change Orders.

##### **B. Reports**

Successful Bidder is required to file the following payment reports in the B2G system:

###### **1. Progress Payments:**

By the 15<sup>th</sup> of ***each*** month, the Successful Bidder must enter payment information and related supporting documentation into the Agency's web-based certification and compliance reporting system.

- a. The total of all payments received from the Agency during the previous month.
- b. All payments made to Subcontractors during the previous month.

The Successful Bidder is responsible for ensuring that subcontractors confirm receipt of payment in the B2G system by the end of each month.

###### **2. Final Payment:**

Before the Agency processes the Successful Bidder's final payment and/or outstanding retention held against the Successful Bidder, the Successful Bidder shall notate in the B2G system:

- a. The payment to each subcontractor is considered "Final".
- b. Every subcontractor must confirm they have received full and "Final" payment in the B2G system.
- c. For federal reporting purposes, Attachment E must be completed and signed by the Successful Bidder and DBE firm(s) prior to Successful Bidder receiving final payment.

The Successful Bidder is responsible for ensuring that subcontractors confirm the receipt of full and "Final" payment in the B2G system.

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**City of Phoenix**

**Disadvantaged Business Enterprise (DBE) Program**

**DBE-Race & Gender Neutral (Negotiated)**

**FORM EO1 STATEMENT OF OUTREACH COMMITMENT  
(Due with initial submittal)**

<b>Project Number: WS85509031</b>	<b>Project Title: WMR ABB: MOUNTAIN VIEW ROAD TO PEORIA AVE &amp; 19TH AVE TO 15TH AVE</b>
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On behalf of the Submitter, I certify under penalty of perjury that the following information is true and correct.

If selected as the Successful Submitter, the Successful Submitter will:

- 1) Fulfill all required small business outreach requirements and shall submit all required outreach efforts documentation for contracting opportunities within 30 days or a date determined by the City following contract award recommendation;
- 2) Conduct all required small business outreach and will submit all supporting documentation; and
- 3) Comply with the Race - and Gender-Neutral post-award requirements stated in the DBE Contract Clause.

Company Name: \_\_\_\_\_

Company Mailing Address: \_\_\_\_\_

Representative Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Disadvantaged Business Enterprise (DBE) Program  
DBE-Race & Gender-Neutral (Negotiated)  
Form EO2 SMALL BUSINESS OUTREACH EFFORTS**

<b>Name of Company (Submitter):</b>	<b>Contract # / Project #:</b>	<b>Contract Name:</b>
<b>Email:</b>	<b>Phone #:</b>	<b>Point of Contact:</b>

Successful Submitter must conduct outreach efforts and submit supporting documentation of those outreach efforts as described in the Disadvantaged Business Enterprise (DBE) Program Race- and Gender-Neutral Contract Clause (Contract Clause). Detailed instructions for this form are included in the Contract Clause. Supporting documentation is required for columns D and F. Successful Submitter should make additional copies of this form as needed.

<b>(A) Small Business Name and Contact Information</b>	<b>(B) Business Status</b>	<b>(C) Scope(s) of Work Solicited</b>	<b>(D) Solicitation Method</b>	<b>(E) Selection Decision</b>	<b>(F) Communication Final Selection Outcome</b>										
<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td colspan="2">Name:</td></tr> <tr><td colspan="2">Address:</td></tr> <tr> <td style="width:70%;">City, State, Zip:</td> <td style="width:30%;">Number of Employees:</td> </tr> <tr> <td>Phone Number:</td> <td>Email or Fax:</td> </tr> <tr> <td>Number of Years in Business:</td> <td>Range of Annual Gross Receipts:</td> </tr> </table>	Name:		Address:		City, State, Zip:	Number of Employees:	Phone Number:	Email or Fax:	Number of Years in Business:	Range of Annual Gross Receipts:	<input type="checkbox"/> DBE  <input type="checkbox"/> SBC - Small Business Concern  <input type="checkbox"/> SBE - City of Phoenix Certified  <input type="checkbox"/> Unknown	<b>List Scope(s) of Work</b>	<input type="checkbox"/> E-mail Blast  <input type="checkbox"/> Phone Call  <input type="checkbox"/> In-Person  <input type="checkbox"/> Newspaper  <input type="checkbox"/> Website  <input type="checkbox"/> Trade Listing  <input type="checkbox"/> Outreach Event  <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected  Dollar Value:  <input type="checkbox"/> Firm was not selected  Provide explanation of why firm NOT selected _____ _____	Date Firm was Notified:  <hr/> Method used to Communicate Selection: <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Letter <input type="checkbox"/> In person
Name:															
Address:															
City, State, Zip:	Number of Employees:														
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Name:															
Address:															
City, State, Zip:	Number of Employees:														
Phone Number:	Email or Fax:														
Number of Years in Business:	Range of Annual Gross Receipts:														

\*Firms must be notified of final selection outcome prior to submittal of columns E&F of this form.



**City of Phoenix**

**Disadvantaged Business Enterprise (DBE) Program**

**DBE-Race & Gender Neutral (Negotiated)**

**FORM EO3 SMALL BUSINESS UTILIZATION COMMITMENT**

<b>Project Number:</b> WS85509031	<b>Project Title:</b> WMR ABB: MOUNTAIN VIEW ROAD TO PEORIA AVE & 19TH AVE TO 15TH AVE
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On behalf of the Successful Submitter, I certify under the penalty of perjury that the information submitted herein is true and correct:

1. The firms indicated as "Selected" in **Form EO2 Small Business Outreach Efforts**, will participate in this contract;
2. The Successful Submitter will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the DBE contract clause;
3. Successful Submitter understands and agrees that any and all changes or substitutions to subcontracts with DBE's and Small Businesses must be authorized by the Phoenix DBE Compliance Specialist prior to implementation; and
4. The following statement is true and correct:

The proposed total participation of DBE, SBC, and SBE firms on this contract will be:

\$ \_\_\_\_\_ %

Company Name: \_\_\_\_\_

Company Mailing Address: \_\_\_\_\_

Representative Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Disadvantaged Business Enterprise (DBE) Program  
DBE-Race & Gender Neutral (Non-Negotiated)  
Form EO2 SMALL BUSINESS OUTREACH EFFORTS**

<b>Bidder's Name:</b>	<b>Contract # / Project #: WS85509031</b>	<b>Contract Name: WMR ABB: MOUNTAIN VIEW RD TO PEORIA AVE &amp; 19TH AVE TO 15TH AVE</b>
<b>Email:</b>	<b>Phone #:</b>	<b>Point of Contact:</b>

Each bidder must conduct outreach efforts and submit documentation of those outreach efforts as described in the Disadvantaged Business Enterprise (DBE) Program Race & Gender Neutral Contract Clause. Detailed instructions for this form are included in the Contract Clause. Supporting documentation is required for Columns D and F. Bidders should make additional copies of this form as needed for their submittal.

(A) Small Business Name and Contact Information	(B) Business Status	(C) Scope(s) of Work Solicited	(D) Solicitation Method	(E) Selection Decision*	(F) Communication Final Selection Outcome*
Name: Address: City, State, Zip:      Number of Employees: Phone Number:      Email or Fax: Number of Years in Business:      Range of Annual Gross Receipts:	<input type="checkbox"/> DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	<b>List Scope(s) of Work</b>   <b>Estimated percentage of total contract value:</b> %	<input type="checkbox"/> E-mail Blast <input type="checkbox"/> Phone Call <input type="checkbox"/> In-Person <input type="checkbox"/> Newspaper <input type="checkbox"/> Website <input type="checkbox"/> Trade Listing <input type="checkbox"/> Outreach Event <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected  Dollar Value:  <input type="checkbox"/> Firm was not selected Provide explanation of why firm NOT selected _____ _____	Date Firm was Notified: _____ Method used to Communicate Selection: <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Letter <input type="checkbox"/> In person
Name: Address: City, State, Zip:      Number of Employees: Phone Number:      Email or Fax: Number of Years in Business:      Range of Annual Gross Receipts:	<input type="checkbox"/> DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> Unknown	<b>List Scope(s) of Work</b>   <b>Estimated percentage of total contract value:</b> %	<input type="checkbox"/> E-mail Blast <input type="checkbox"/> Phone Call <input type="checkbox"/> In-Person <input type="checkbox"/> Newspaper <input type="checkbox"/> Website <input type="checkbox"/> Trade Listing <input type="checkbox"/> Outreach Event <input type="checkbox"/> Other	<input type="checkbox"/> Firm was selected  Dollar Value:  <input type="checkbox"/> Firm was not selected Provide explanation of why firm NOT selected _____ _____	Date Firm was Notified: _____ Method used to Communicate Selection: <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Letter <input type="checkbox"/> In person

\*Firms must be notified of final selection outcome prior to submittal of columns E&F of this form.



**City of Phoenix**

**Disadvantaged Business Enterprise (DBE) Program**

**FORM EO3 SMALL BUSINESS UTILIZATION COMMITMENT (RGN)  
(Due within 5 calendar days of the bid deadline.)**

<b>Project Number:</b> WS85509031	<b>Project Title:</b> WMR ABB: MOUNTAIN VIEW ROAD TO PEORIA AVE & 19TH AVE TO 15TH AVE
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On behalf of the Successful Bidder, I certify under the penalty of perjury that the information submitted herein is true and correct:

1. The firms indicated as "Selected" in **Form EO2 Small Business Outreach Efforts**, will participate in this contract;
2. The Successful Bidder will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the DBE contract clause;
3. Successful Bidder understands and agrees that any and all changes or substitutions to subcontracts with DBE's and Small Businesses must be authorized by the Phoenix DBE Compliance Specialist prior to implementation; and
4. The following statements are true and correct:

The Proposed Total Small Business percentage on this contract will be:

\_\_\_\_\_ %

Company Name: \_\_\_\_\_

Company Mailing Address: \_\_\_\_\_

Representative Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Agency Name**  
ADDRESS  
Phone Numbers



**City of Phoenix**

**Disadvantaged Business Enterprise (DBE) Program**

**DBE-Race & Gender Neutral (Negotiated)**

**FORM EO3 SMALL BUSINESS UTILIZATION COMMITMENT**

<b>Project Number:</b> WS85509031	<b>Project Title:</b> WMR ABB: MOUNTAIN VIEW ROAD TO PEORIA AVE & 19TH AVE TO 15TH AVE
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On behalf of the Successful Submitter, I certify under the penalty of perjury that the information submitted herein is true and correct:

1. The firms indicated as "Selected" in **Form EO2 Small Business Outreach Efforts**, will participate in this contract;
2. The Successful Submitter will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the DBE contract clause;
3. Successful Submitter understands and agrees that any and all changes or substitutions to subcontracts with DBE's and Small Businesses must be authorized by the Phoenix DBE Compliance Specialist prior to implementation; and
4. The following statement is true and correct:

The proposed total participation of DBE, SBC, and SBE firms on this contract will be:

\$ \_\_\_\_\_ %

Company Name: \_\_\_\_\_

Company Mailing Address: \_\_\_\_\_

Representative Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT C**

**WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA (WIFA) FORMS**

**(ATTACHED)**

**Water Infrastructure Finance Authority of Arizona  
Clean Water Revolving Fund  
Drinking Water Revolving Fund**

**CONTRACT PACKET for Governmental Borrowers - Equivalency Projects**

*This packet lists required contract conditions that apply to all Clean Water and Drinking Water State Revolving Fund Equivalency projects and contains forms that must be used in the procurement process. Please review this packet prior to bidding. If you are unsure if your project is an equivalency project, please contact WIFA staff.*

**PLEASE NOTE**

- **This packet, in its entirety, must be physically included in all bidding, solicitation and contract documents.**
- **Build America, Buy America (BABA) Act applies to this project.**
  - BABA covered items include products made of iron or steel, manufactured products, and construction materials.
- **Federal Davis-Bacon prevailing wages apply to this project.**
  - Payment of the wages, fringe benefits and overtime rates is required.
  - **The appropriate Federal (Davis-Bacon) Prevailing Wage Decision must be physically incorporated into the bidding and contract documents.**
  - The construction category of Heavy (excluding dam construction) should typically be applied to all projects funded by WIFA. If you believe that a different category of wages, such as Building, should be applied to your project or portions of your project, please contact WIFA in advance.
  - Weekly certified payroll submittal is required under the Federal Davis-Bacon laws.
- Compliance with the Civil Rights Act and Equal Employment Opportunity is required.
- Promotion of Small, Minority and Women-owned Businesses and participation in EPA's Disadvantaged Business Enterprise (DBE) Program is required.
- Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment.



**Water Infrastructure Finance Authority of Arizona**  
**Clean Water Revolving Fund**  
**Drinking Water Revolving Fund**

**Required Contract Conditions**

This project is being financed in whole or in part by the Water Infrastructure Finance Authority of Arizona through the Clean Water or Drinking Water State Revolving Fund. The loan recipient is required to comply with the following federal and state laws, rules and regulations and must ensure that their contractor(s) also comply(ies) with these regulations, laws and rules.

1. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. Sec. 2000d), (ii) the Rehabilitation Act of 1973 (Pub. L. 93-1123, 87 Stat. 355, 29 U.S.C. Sec. 794), (iii) the Age Discrimination Act of 1975 (Pub. L. 94-135 Sec. 303, 89 Stat. 713, 728, 42 U.S.C. Sec. 6102), (iv) Section 13 of the Federal Water Pollution Control Act (Pub. L. 92-500, 33 U.S.C. Sec. 1251), and subsequent regulations, ensures access to facilities or programs regardless of race, color, national origin, sex, age or handicap.
2. Equal Employment Opportunity (Executive Order 11246, as amended by Executive Orders 11375 and 12086 and subsequent regulations). Prohibits employment discrimination on the basis of race, color, religion, sex or national origin. Inclusion of the seven clauses in Section 202 of Executive Order 11246 as amended by Executive Orders 11375 and 12086 are required in all project related contracts and subcontracts over \$10,000.
3. Promoting the use of Small, Minority, and Women-owned Businesses (Executive Orders 11625, 12138 and 12432), (ii) Small Businesses Reauthorization & Amendment Act of 1988 (Section 129 of Pub. L. 100-590), (iii) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102-389, 42 U.S.C. Sec. 437d), and (iv) Title X of the Clean Air Acts Amendments of 1990 (Pub. L. 101-549, 42 U.S.C. Sec. 7601 note) (“EPA’s 10% statute”). Encourages recipients to award construction, supply and professional service contracts to minority and women’s business enterprises (MBE/WBE) and small businesses and requires recipients to utilize affirmative steps in procurement.
4. Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements (40 C.F.R. Part 33).
5. Debarment and Suspension (Executive Order 12549). Prohibits entering into contracts or subcontracts with individuals or businesses who are debarred or suspended. Borrowers are required to check the status of all contractors (construction and professional services) and must require contractors to check the status of subcontractors for contracts expected to be equal to or over \$25,000 via this Internet address: <https://www.sam.gov/SAM/>.
6. E-Verify (A.R.S. § 41-4401). A governmental entity shall not award a contract to any contractor or subcontractor that fails to comply with A.R.S. § 23-214(A). Every government entity shall (i) ensure that every government entity contractor and subcontractor complies with the federal

immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A); (ii) require that every government entity contract include the required provisions listed under A.R.S. § 41-4401(A); and (iii) establish procedures to conduct random verification of the employment records of government entity contractors and subcontractors.

7. Build America, Buy America Act (Public Law No. 117-58, §§ 70901-52). Funds provided under this award may not be used for a project for infrastructure unless all iron and steel, manufactured products, and construction materials used meet the Build America, Buy America Act requirements.
8. Federal Davis-Bacon prevailing wages apply to this project. Payment of the wages, fringe benefits and overtime rates are required.
9. Prohibition on certain telecommunication and video surveillance services or equipment detailed in section 889 of Public Law 115-232 (CFR 200.216) applies.

**Water Infrastructure Finance Authority of Arizona  
Clean Water Revolving Fund  
Drinking Water Revolving Fund**

**Build America, Buy America Act**

**PLEASE NOTE:** Build America, Buy America Act requirements apply to this project.

The “subrecipient” referred to throughout the Build America, Buy America contract conditions is the WIFA Borrower.

“WIFA” is the Water Infrastructure Finance Authority of Arizona, State Capitalization Grant recipient, recipient, or the Authority.

The Contractor acknowledges to and for the benefit of the subrecipient and WIFA that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as “Build America, Buy America;” that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”) including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants to and for the benefit of the subrecipient and WIFA:

- (a) the Contractor has reviewed and understands the Build America, Buy America Requirements,
- (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and
- (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the subrecipient or WIFA.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the subrecipient or WIFA to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the subrecipient or WIFA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from WIFA or any damages owed to WIFA by the subrecipient). If the Contractor has no direct contractual privity with WIFA, as a lender or awardee to the subrecipient for the funding of its project, the subrecipient and the Contractor agree that WIFA is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of WIFA.

**Water Infrastructure Finance Authority of Arizona  
Clean Water Revolving Fund  
Drinking Water Revolving Fund**

**Build America, Buy America Act**

**Public Law No. 117-58, §§ 70901-52, enacted November 15, 2021**

The Act requires that no later than May 14, 2022—180 days after the enactment of the IIIA— “[N]one of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, 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.”

**Use of American Iron, Steel, Manufactured Products, and Construction Materials**

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- (1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) All manufactured products used in the project are produced in the United States. This 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, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
- (3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

## **Highlights from EPA Guidance on Build America, Buy America**

Complete document available at [www.epa.gov/cwsrf/build-america-buy-america-baba](http://www.epa.gov/cwsrf/build-america-buy-america-baba)

### **Waivers**

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements. When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:

- (1) applying the domestic content procurement preference would be inconsistent with the public interest;
- (2) the 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; or
- (3) the 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.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

### **Definitions**

"Construction materials" includes an article, material, or supply— other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

**Build America Buy America  
*De Minimis* General Applicability Waiver**

Infrastructure projects involve the use of potentially thousands of miscellaneous, generally low-cost products that are essential for construction and are incorporated into the physical structure of the project. For many of these miscellaneous products, the country of manufacture and the availability of alternatives are not always readily or reasonably identifiable prior to procurement in the normal course of business; for other miscellaneous products, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually or procured in bulk, mark them as potentially *de minimis* items.

Section 70914(b)(1) of the Infrastructure Investment and Jobs Act authorizes the Administrator to waive the requirements of Build America, Buy America if implementation would be inconsistent with the public interest. Due to the critical need to reduce the administrative burden for recipients and agencies and to ensure recipients can effectively carry out the EPA funded activity in a timely manner, it is in the public interest to waive Build America, Buy America requirements for products used in and incorporated into a project that cumulatively comprise **no more than five percent** of the total project cost.

Assistance recipients who wish to use this waiver should in consultation with their contractors determine the items to be covered by this waiver and must retain relevant documentation (i.e., invoices) as to those items in their project files.

**Water Infrastructure Finance Authority of Arizona  
Clean Water Revolving Fund  
Drinking Water Revolving Fund**

**Davis-Bacon Contract Conditions (Federal Prevailing Wages)**

**PLEASE NOTE:** Federal Davis-Bacon prevailing wages apply to this project. Payment of the wages, fringe benefits and overtime rates is required.

The “subrecipient” referred to throughout the Davis-Bacon contract conditions is the WIFA Borrower.

“WIFA” is the Water Infrastructure Finance Authority of Arizona, State Capitalization Grant recipient, recipient, or the Authority.

## **Wage Rate Requirements** **(Also referred to as Attachment 6)**

### **Preamble**

With respect to the Clean Water and Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(3)(ii)(A) below and for compliance as described in Section 5.

### **Requirements for Subrecipients That are Governmental Entities:**

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient will contact EPA. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <https://www.dol.gov/agencies/whd/government-contracts/construction>.

#### **1. Applicability of the Davis-Bacon prevailing wage requirements.**

Davis-Bacon prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a Clean Water Revolving Fund and to any construction project carried out in whole or in part by assistance made available by a Drinking Water Revolving Fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the State recipient before authorizing work on that site.

#### **2. Obtaining Wage Determinations.**

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor <https://sam.gov/content/wage-determinations> weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipient shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination 10 days or less prior to the closing date, the subrecipient may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient,



at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor <https://sam.gov/content/wage-determinations> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from <https://sam.gov/content/wage-determinations> into the ordering instrument. Typically, the appropriate wage determination would be the one in effect on the date the task order, work assignment or similar instrument is awarded.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### **3. Contract and Subcontract provisions.**

The recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR § 5.1, the following clauses:

#### **(1) Minimum wages.**

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section;

also, regular contributions made or costs incurred for more than a weekly period (but not less often 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. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, <https://sam.gov/content/wage-determinations>.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore 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.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the

30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage 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 or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments 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 assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, 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 or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the recipient may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the

registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the subgrant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm) or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

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

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages 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 Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications 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.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees -

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the Apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan

approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and subrecipient(s), the State recipient, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **4. Contract Provision for Contracts in Excess of \$100,000.**

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3 above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3 above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the recipient and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## **5. Compliance Verification**

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use WIFA's interview form, Department of Labor's Standard Form 1445, or equivalent documentation to memorialize the interviews. WIFA's interview form and instructions are included with this packet.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.



(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed below and to the appropriate DOL Wage and Hour District Office listed at [www.dol.gov/whd](http://www.dol.gov/whd).

**Joe Ochab, EPA Region 9, 75 Hawthorne St. (P-22), San Francisco, CA 94105**

**Clean Water Revolving Fund  
Drinking Water Revolving Fund**

**Equal Employment**

Inclusion of these seven clauses (excerpt from Executive Order No. 11246, Section 202 as amended by Executive Order 11375 and 12086) is required in all CWRF and DWRF project related contracts and subcontracts over \$10,000:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and all of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Water Infrastructure Finance Authority of Arizona  
Clean Water Revolving Fund  
Drinking Water Revolving Fund**

**Disadvantaged Business Enterprises (DBE)**

**Good Faith Efforts**

Borrowers and their prime contractors must follow, document, and maintain documentation of their good faith efforts as listed below to ensure that Certified Disadvantaged Business Enterprises\* (DBEs) have the opportunity to participate in the project by increasing DBE awareness of procurement efforts and outreach.

1. 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.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could be subcontracted with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U. S. Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in numbers 1 through 5 above.

**Required Contract Conditions**

These conditions must be included in all procurement contracts entered into by the Borrower for all DWRF and CWRF projects:

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

5. A Borrower must ensure that each procurement contract it awards contains the following terms and conditions:

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 DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.*

*\*\* More information about DBE requirements can be found at <https://www.epa.gov/grants/frequently-asked-questions-disadvantaged-business-enterprises>*

**Water Infrastructure Finance Authority of Arizona  
Clean Water Revolving Fund  
Drinking Water Revolving Fund**

**Prohibition on Certain Telecommunication and Video Surveillance Equipment**

**Public Law 115-232, enacted August 13, 2020**

WIFA borrowers must comply with regulations at 2 CFR 200.216, *Prohibition on certain telecommunication and video surveillance services or equipment*, implementing section 889 of Public Law 115-232. The regulation prohibits the use of Federal funds to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use “covered telecommunications equipment or services” identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system. Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the System for Award Management exclusion list (<https://sam.gov/SAM/>).

As described in section 889 of Public Law 115-232, covered telecommunications equipment or services includes:

- **Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).**
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other 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).**
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- 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.

There is no exhaustive list of components and services that fall under the prohibition. Borrowers and contractors should be particularly mindful of project components with internet or cellular connections. For example, automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g. process control systems, distributed control systems and programmable logic controls), and security cameras and other electronic security measures. Items included in the prohibition are not eligible costs, and WIFA cannot reimburse borrowers for these costs.