

## SRF SPECIAL CONDITIONS

The attached instructions and regulations as listed below shall be incorporated into the Specifications and comprise the SRF Special Conditions:

1. Special Provisions - (Attachment No. 1).
2. EEO Documents:
  - (a) Notice of Requirement for Affirmative Action - (Attachment No. 2);
  - (b) Check List of EEO Documentation - (Attachment No. 3):
3. Small Minority and Women's Businesses - (Attachment No. 4).
4. Debarred Firms - (Attachment No. 5).
5. Outlay Management Schedules - (Attachment No. 6).
6. Bonds and Insurance - (Attachment No. 7).
7. SRF Sign Requirements - (Attachment No. 8)

These Special Conditions shall supersede any conflicting provisions of this contract.

SPECIAL PROVISIONS

- (a) Sewer-line crossing of all roads and streets shall be done in accordance with North Carolina Department of Transportation Policy and Procedure as set forth in the Special Conditions.
- (b) Construction shall be carried out so as to prevent bypassing of flows during construction.
- (c) Siltation and soil erosion must be minimized during construction.
- (d) Restore disturbed areas to original or better condition.
- (e) Use of Chemicals: All chemicals used during project construction or furnished for project operation, whether herbicide, pesticide, disinfectant, polymer, reactant, or of other classification, must show approval of either State or USDA. Use of all such chemicals and disposal of residues shall be in conformance with instructions, and prior approval of the State.
- (f) The construction of the project, including the letting of contracts in connection therewith, shall conform to the applicable requirements of State, territorial, and local laws and ordinances to the extent that such requirements do not conflict with Federal laws.
- (g) The owner shall provide and maintain competent and adequate supervision and inspection.
- (h) The Federal Government and the State shall have access to the site and the project work at all times.

EEO NOTICE

Following, is the standard language which must be incorporated into all solicitations for offers and bids on all Federal and Federally-assisted construction contracts or subcontracts in excess of \$10,000 to be performed in North Carolina:

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

1. The Offeror’s or Bidder’s attention is called to the “Equal Opportunity Clause” which is included in the Non-discrimination Provision and Labor Standards, EPA Form 5720-4, (Attachment No. 5 of these Special Conditions), and the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” set herein.
2. The goals and timetables for minority and female participation expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, are as follows: \*Enter below the goals listed in Tab D for North Carolina on Pages SRF - 5 and SRF - 6

Timetables	Goals for Minority Participation for each trade	Goals for Female participation in each trade
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These goals are applicable to all Contractor’s construction work (whether or not it is Federal or Federally assisted) performed in the covered area.

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

3. The Contractor shall provide written notification to the appropriate Office of Federal Contract Compliance Programs (OFCCP) area office within ten (10) working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract name, address, and telephone number of the subcontractor; employee identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

The addresses for the OFCCP's in North Carolina are as follows:

Raleigh Office

Mr. Jerome Geathers  
Assistant District Director  
U.S. Department of Labor  
ESA/OFCCP  
300 Fayetteville Street Mall, Suite 313  
Raleigh, NC 27601  
Telephone No. (919) 856-4058

Charlotte Office

Mr. Curtis Simms  
District Director  
U. S. Department of Labor  
OFCCP/ESA  
Mart Office Building  
Room EE401  
800 Briar Creek Road  
Charlotte, NC 28205  
Telephone No. (919) 371-6113

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the entire State of North Carolina.

TAB D

GOALS AND TIMETABLES

The following goals and timetables for female utilization should be included in all Federal and Federally assisted construction contracts and subcontracts in excess of \$10,000.00.

AREA COVERED

Goals for Women apply nationwide

Goals

EEO Goals applicable for this project:

Women:	6.9%
Minorities:	See specific Economic Area Percent

Appendix E-80

Until further notice, the following goals for minority utilization in each construction craft and trade shall be included in all Federal or Federally assisted construction contracts and subcontracts in excess of \$10,000.00 to be performed in the respective geographical areas. The goals are applicable to each non-exempt contractor's total onsite construction workforce, regardless of whether or not part of that workforce is performing work on Federal or Federally assisted or non-Federally related project, contract or sub-contract.

Construction contractors, which are participating in an approved Hometown Plan, (see 41 CFR 60-4.5) are required to comply with the goals of the Hometown Plan, with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work, such contractors are required to comply with the applicable SMSA or EA goals contained in this Appendix E-80.

ECONOMIC AREAS

<u>State</u>	<u>Goal</u> (Percent)
<b>VIRGINIA</b>	
SMSA Counties:	
5720 Norfolk – Virginia Beach – Portsmouth NC Currituck	26.6
Non-SMSA Counties:	
NC – Bertie, Camden, Chowan, Gates, Hertford, Pasquotank, Perquimans	29.7
<b>NORTH CAROLINA</b>	
024 Rocky Mount – Wilson, Greenville, NC	
Non-SMSA Counties:	31.7
NC – Beaufort, Carteret, Craven, Dare, Edgecombe, Greene, Halifax, Hyde, Jones, Lenoir, Martin, Nash, Northampton, Pamlico, Pitt, Tyrrell, Washington, Wayne, Wilson	
025 Wilmington, NC	
SMSA Counties:	
9200 Wilmington, NC	20.7
NC – Brunswick, New Hanover	
Non-SMSA Counties:	
NC – Columbus, Duplin, Onslow, Pender	23.5
026 Fayetteville, NC	
SMSA Counties:	
2560 Fayetteville, NC	26.2
NC – Cumberland	

Non-SMSA Counties	33.5
NC – Bladen, Hoke, Richmond, Robeson, Sampson, Scotland	
027 Raleigh – Durham, NC	
SMSA Counties:	
6640 Raleigh – Durham, NC	22.6
NC – Durham, Orange, Wake	
Non-SMSA Counties:	24.7
NC – Chatham, Franklin, Granville, Harnett Johnston, Lee, Person, Vance, Warren	
028 Greensboro – Winston-Salem – High Point, NC	
SMSA Counties:	
1300 Burlington, NC	16.2
NC – Alamance	
3120 Greensboro – Winston-Salem, High Point, NC	16.4
NC – Davidson, Forsyth, Guilford, Randolph, Stokes, Yadkin	
Non-SMSA Counties:	15.5
NC – Alleghany, Ashe, Caswell, Davie, Montgomery, Moore, Rockingham, Surry, Watauga, Wilkes	
029 Charlotte, NC	
SMSA Counties:	
1520 Charlotte – Gastonia, NC	18.5
NC – Gaston, Mecklenburg, Union	
Non-SMSA Counties:	15.7
NC – Alexander, Anson, Burke, Cabarrus, Caldwell, Catawba, Cleveland, Iredell, Lincoln, Rowan, Rutherford, Stanley, SC – Chester, Lancaster, York	
030 Asheville, NC	
Non- SMSA Counties:	
0480 Asheville, NC	8.5
NC – Buncombe, Madison	
Non-SMSA Counties:	6.3
NC – Avery, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Mitchell, Swain, Transylvania, Yancey	

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

EEO Specifications

Following is the standard language which must be incorporated into all solicitations for offers and bids on all Federal and Federally-assisted construction contracts or subcontracts in excess of \$10,000 to be performed in designated geographical areas:

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

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

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications, and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area, either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a – 7p of these Specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, refer to either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period. The Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs, apprenticeships, and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulleting boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained, identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women, and where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
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- 8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a – 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7 a – 7p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
  - 9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.)
  - 10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
  - 11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
  - 12. The Contractor shall carry out such sanctions and penalties, for violation of these specifications and the Equal Employment Opportunity Clause; including suspension, termination and cancellation of existing subcontracts, as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Program. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g.: mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing, herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program.)

SPECIAL NOTICE TO BIDDERS  
ON FEDERALLY ASSISTED CONSTRUCTION

EEO DOCUMENTATION REQUIRED BY EXECUTIVE ORDER 11246 AS AMENDED

The Low Responsive Responsible Bidder Must Forward The Following Items, In Duplicate, To The Owner (Recipient) No Later Than Ten (10) Days After Bid Opening. The Owner Shall Have One (1) Copy Available For Inspection By The Office Of Federal Contracts Compliance Within Fourteen (14) Days After Bid Opening. The Website For The OFCC Is <http://www.dol.gov/esa/ofccp/>

1. EPA project number. Project location. Type of construction.
2. Copy of EEO-1 Report (Employer Information Report, annually submitted to the Equal Employment Opportunity Commission.
3. Copy of the Affirmative Action Plan of the contractor. Indicate company official responsible for EEO.
4. List of current construction contracts, with dollar amount. List contracting federal agency, if applicable.
5. Statistics concerning company percent workforce, permanent and temporary, by sex, race, and trade. How about handicapped and aged? 40 CFR 7.60.
6. List of employment sources for project in question. If union sources are utilized indicate percentage of minority membership within the union crafts.
7. Anticipated employment needs for this project, by sex, race, and trade with estimate of minority participation in specific trades.
8. If previously certified as MBE/WBE/DBE, list certifying agency.
9. List of subcontractors (name, address, and telephone) with dollar amount and duration of subcontract. Subcontractor's contracts over \$10,000 must submit items one (1) through nine (9).
10. List of any subcontract work yet to be committed with estimate of dollar amount and duration of contract.
11. Contract price. Duration of prime contract.
12. DBE Documents – See special instructions regarding use of Minority and Woman-Owned and Small businesses (Attachment No. 4). **DBE documentation must be submitted to the State Construction Grants & Loans Section.**

MINORITY BUSINESS ENTERPRISE  
REQUIREMENTS FOR FEDERAL LOAN PROJECTS

For federally assisted contracts in excess of \$10,000, the tentatively selected bidder is required to submit EEO documentation in duplicate to the owner (recipient) within then (10) days after bid opening. The owner must transmit one (1) copy of the information to the State within fourteen (14) days after bid opening. The information will be reviewed and an EEO conference may be scheduled, as prescribed by EPA regulations.

Failure to submit the EEO documentation may subject the contractor to sanctions under Executive Order 11246.

It is a federal requirement that recipients of a federal loan for wastewater facilities award a fair share of sub-agreements to small, minority and women's businesses. Fair Share is a reasonable amount of funds commensurate with the total project funding, demographic factors and the availability of minority and women's businesses. A fair share does not constitute an absolute goal, but a commitment on the part of the recipient to attempt to use minority and women's businesses by carrying out the six affirmative steps below. The recipient must document the actions taken to comply with the affirmative steps. If the recipient has a law, ordinance, or executive order, which establishes a goal for minority and/or women's businesses that is higher than the State goals, the recipient may use that goal as the "fair share" objective for the project. **The goals for North Carolina are 8% MBE and 5% WBE.**

The affirmative steps to be followed by recipients are:

1. Including qualified small and minority and women's business on solicitation lists.
2. Assuring that small and minority and women's businesses are solicited whenever they are potential sources.
3. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small and minority and women's business.
4. Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small and minority and women's businesses.
5. Using the services and assistance of the U.S. Small Business Administration and the Office of Minority business Enterprise of the U.S. Department of Commerce.
6. Requiring each party to a sub-agreement to take the affirmative steps outlined in items 1 – 5 of this section.

For purposes of clarification:

- This requirement mandates three (3) responsibilities. Separate solicitations must be made of small and minority and women's business enterprises.
- Any specific clarification concerning the ownership and/or control issues will be provided by the EPA Regional Office.
- The control determination will revolve around the minority or women owner's involvement in the day-to-day management of the business enterprise.
- Solicitation should allow adequate time for price analysis; the State recommends that contact be made no later than fifteen (15) days before bid opening.
- **Efforts taken to comply with this requirement must be documented in detail; maintain records of firms contacted**, including any negotiation efforts to reach competitive price levels, and awards to the designated firms.
- In Mecklenburg County only, each contractor shall submit Forms SF-257, Monthly Employment Utilization Reports, directly to the appropriate office of Federal Contract Compliance Programs (OFCCP) Area Office. All other contracts will be reported monthly as outlined in Attachment No. 2, Item 3.

By the submission of this bid, each bidder acknowledges that he understands and agrees to be bound by the Equal Employment Opportunity requirements of EPA regulations (40 CFR Part 8, particularly Section 8.4(h), which shall be applicable throughout the performance of work under any contract awarded pursuant to this solicitation). Each bidder agrees that if awarded a contract, it will similarly bind contractually each subcontractor. In implementation of the foregoing policies, each bidder further understands and agrees that if awarded a contract, it must engage in affirmative action directed at promoting and ensuring equal employment opportunity in the workforce used under the contract (and that it must require contractually the same effort of all subcontractors whose subcontracts exceed \$10,000). The bidder understands and agrees that "affirmative action" as used herein shall constitute a good faith effort to achieve and maintain minority employment in each trade in the on-site workforce used on the project.

Any proposed changes from the approved Minority/Women/Small business participation after EEO/MBE approval shall be reported to the State Construction Grants and Loans Section prior to initiation of the action with the reason for the proposed deviation.

The State recommends that the prime contractor utilize the services of the Minority Business Development Service Centers. These centers are funded by the U.S. Department of Commerce to provide technical, financial, and contracting assistance to minority and women's business enterprises. These centers are located in a number of regional cities.

Use of the services provided by centers does not absolve the prime contractors from pursuing additional efforts to comply with this requirement.

## Definitions

1. Minority Business Enterprise (MBE) is a business concern which is:
  - a. Certified as socially and economically disadvantaged by the Small Business Administration.
    - (1) Socially disadvantaged individuals means such persons which are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances.
    - (2) Economically disadvantaged individuals means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans), are to be considered socially and economically disadvantaged.
  - b. Certified as a minority business enterprise by a State or federal agency, or
  - c. An independent business concern, which is at least 51% owned and controlled by minority group member(s).
    - (1) A minority group member is an individual who is a citizen of the United States and one of the following:
      - (a) Black American:
      - (b) Hispanic Americans (with origins from Puerto Rico, Mexico, Cuba, South or Central America; and
      - (c) Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U. S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian subcontinent.
      - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
    - (2) In order to satisfy this third criteria of the MBE definition, the minority ownership's interest must be real, substantial and continuing. Such interest is characterized by:
      - (a) Risk of loss/share of profit commensurate with the proportional ownership; and

(b) Receipt of the customary incidents of ownership, such as salary and/or intangible benefits.

(3) A minority owner must have and exercise control of the business decisions. Characteristics of control include, but are not limited to:

- (a) Authority to sign bids and contracts;
- (b) Decisions in price negotiations;
- (c) Incurring liabilities for the firm;
- (d) Final staffing decisions;
- (e) Policy-making; and
- (f) General company management decisions.

d. Only those firms performing a useful business function according to custom and practice in the industry are qualified as MBEs. Acting merely as a passive conduit of funds to some other firm where such activity is unnecessary to accomplish the project does not constitute a “useful business function according to custom and practice in the industry.” The purpose of this approach is to discourage the use of MBE “fronts” and limit the creation of an artificial supplier and broker marketplace.

2. Small Business Concern: Means a concern, including the affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards set forth in 13 CFR 121.

a. Concern: Means any business entity located inside the United States that is organized for profit (even if it is owned by a nonprofit entity), pays U. S. taxes, and/or uses American products, materials, and/or labor, etc. A “concern” may be an individual, a partnership, a corporation, a joint venture, an association, or a cooperative.

b. Non dominant in the field of operation means not exercising a controlling or major influence in an industry. A controlling or major influence can be derived from factors such as business volume, number of employees, financial resources, competitiveness, ownership or control of materials, processes, patent license agreements, facilities, sales territory, and nature of business activity.

c. Affiliates. Business concerns are affiliates of each other, if directly or indirectly:

- (1) Either one controls or has the power to control the other; or
- (2) Another concern controls or has the power to control both.

In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; provided that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to

control the franchises, if the franchisee has the right to profit from its efforts, commensurate with ownership, and bears the risk of loss or failure. Any business entity may be affiliate, whether or not it is organized for profit or located inside the United States.

- d. Annual Receipts: means the gross income (less returns and allowances, sales of fixed assets, and inter-affiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other sources derived for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis). If a concern has been in business less than a year, its annual receipts for the purpose of a size standard will be based on one year's receipts, and shall be computed by dividing its average weekly figure by 52. If a concern has been in business less than three years, its average annual receipts, for the purpose of a size standard, shall be based on three years' receipts; shall be computed by determining its average weekly receipts for the period in which it has been in business, and multiplying such figure by 52.

If a concern acquired an affiliate during the applicable accounting period, the affiliate's receipts for the period during which it was an affiliate must be added to the applicant's receipts. The receipts of a former affiliate are not included, even if such a concern has been an affiliate during a portion of the applicable accounting period.

3. Positive Efforts are documentable attempts to use small business and minority businesses.
4. Women's Business Enterprise (WBE) is a business which is certified as such by a State or federal agency, or which meets the following definition:

"A woman's business enterprise is an independent business concern which is at least 51 percent owned by a woman or women, who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or otherwise qualified WBE which is 51 percent owned by a married woman in a community property State will not be disqualified because her husband has a 50 percent owned by a married man and 49 percent owned by an unmarried woman will not become a qualified WBE by virtue of his wife's 50 percent interest in his share of the business."

In order to comply with the MBE requirements of the federal loan projects, the Special Notice to Bidders shall be, as previously noted, included in the specifications for all contracts and/or subcontracts in excess of \$10,000.

SRF Project No. \_\_\_\_\_  
Owner/Recipient: \_\_\_\_\_

**CERTIFICATION REGARDING  
DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

This form must be completed for each prime and subcontractor; and submitted to the State Construction Grants Section, 1633 Mail Service Center, Raleigh, North Carolina 27699-1633.

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicated for or otherwise criminally or civilly charged by a government entity, (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to five years, or both.

\_\_\_\_\_  
Name & Title of Authorized Representative (Prime Contractor or Sub)

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

I am unable to certify to the above statements. Attached is my explanation.

Prime or Subcontractor's Name: \_\_\_\_\_

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

CONSTRUCTION  
AND  
OUTLAY SCHEDULES

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

Project No. \_\_\_\_\_

Applicant \_\_\_\_\_

Contract Identification \_\_\_\_\_

Description of Contract \_\_\_\_\_

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(INSTRUCTIONS FOR USE ON REVERSE SIDE)

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SCHEDULE 1 – CONSTRUCTION SCHEDULE

Date for Advertisement \_\_\_\_\_

Date for Opening Bids \_\_\_\_\_

Preconstruction Conference Date \_\_\_\_\_

Date of Contract Award \_\_\_\_\_

Contract Period \_\_\_\_\_ days    Projected Contract Completion Date \_\_\_\_\_

Total Eligible Contract Amount \$ \_\_\_\_\_

Work Order Date \_\_\_\_\_

State Construction Date \_\_\_\_\_

% Contract completed \_\_\_\_\_

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SCHEDULE II - CUMULATIVE OUTLAY SCHEDULE - Projection *only* for quarters that remain in the Fiscal Year (FY) plus cumulative annual amount for next FY.

Cumulative Amount thru 1<sup>st</sup> Q Oct/Dec                    \$ \_\_\_\_\_

Cumulative Amount thru 2<sup>nd</sup> Q Jan/March                    \$ \_\_\_\_\_

Cumulative Amount thru 3<sup>rd</sup> Q April/June                    \$ \_\_\_\_\_

Cumulative Amount thru 4<sup>th</sup> Q July/Sept                    \$ \_\_\_\_\_

Cumulative Amount for next Fiscal Year                    \$ \_\_\_\_\_

Bonds and Insurance

- A. Bonding requirements for construction costs in excess of \$300,000 are:
1. Bid guarantee equivalent to 5 percent of the bid price. The bid guarantee shall consist of a firm commitment such as cash, cashiers check, certified check or bid bond submitted with the bid.
- B. Bonding requirements for all contracts in excess of \$50,000 when the project involves two or more contracts whose sum exceeds \$300,000:
1. Performance bond, equal to 100 percent of the contract price, and shall be valid for one year beyond date of acceptance of the completed project.
  2. Payment bond, equal to 100 percent of the contract price.

Bonds must be obtained from companies holding Certificates of Authority as Acceptable sureties, issued by the U. S. Treasury.

Insurance requirements are contained in the General Conditions.

## SRF PROJECT SIGN REQUIREMENTS

So that there will be some uniformity in sign size and sign cost for all projects, the sign size (dimensions) are not to be greater than a 4'X8' sheet of plywood, with materials readily available from local supply stores; and with lettering to identify Recipient, brief project description, consultant engineer, contractor, and the SRF Project Number. It should also include the following separate statements:

- "Financed in part by State and Federal Funds", and
- "An Equal Employment Opportunity Project"

The sign should be placed in a prominent location on the site.