

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 NOTICE - (Attachment No. 2)
3. DBE (MBE/WBE) Requirements - (Attachment No. 3).
4. Debarred Firms Certification- (Attachment No. 4).
5. DBE Forms 6100-2, 6100-3 and 6100-4
6. OERI Contract Provisions

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

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

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.

ECONOMIC AREAS

<u>State</u>	<u>Goal</u> (Percent)
VIRGINIA	
SMSA Counties:	
5720 Norfolk – Virginia Beach – Portsmouth NC Currituck	26.6
Non-SMSA Counties:	29.7
NC – Bertie, Camden, Chowan, Gates, Hertford, Pasquotank, Perquimans	
NORTH CAROLINA	
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:	23.5
NC – Columbus, Duplin, Onslow, Pender	
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	

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 complied 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.
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.)

TO BE SUBMITTED BY BIDDERS (As required by EO 11246)
Loan Recipients, do not submit this to the State Construction Grants & Loans Section

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 the Affirmative Action Plan of the contractor. Indicate company official responsible for EEO.
3. Statistics concerning company percent workforce, permanent and temporary, by sex, race, and trade.
4. List of employment sources for project in question. If union sources are utilized indicate percentage of minority membership within the union crafts.
5. Anticipated employment needs for this project, by sex, race, and trade with estimate of minority participation in specific trades.

DBE (MBE/WBE) REQUIREMENTS

DBE documentation must be submitted to the State Construction Grants & Loans Section. This includes documentation of the good faith efforts and forms 6100-3 and 6100-4

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.

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.

Examples of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- Copies of quotes or responses received from each firm responding to the solicitation.
- A telephone log of follow-up calls to each firm sent a solicitation.
- For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- Copy of pre-bid roster.
- Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- Letter detailing reasons for rejection of minority business due to lack of qualification.
- Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

The following forms are new.

Form 6100-2 – Prime Contractor must provide this to all subcontractors
Subcontractors may submit directly to:

DBE Program Coordinator
Small and Disadvantaged Business Program Manager EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Form 6100-3 – Prime Contractor must provide this to all subcontractors.
Low Bidder returns as part of submittal for State review.

Form 6100-4 – Prime Contractor completes this form.
Prime Returns as part of bid proposal.

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: _____



Environmental
Protection Agency

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

**Disadvantaged Business Enterprise Program
DBE Subcontractor Participation Form**

NAME OF SUBCONTRACTOR¹	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	EMAIL ADDRESS
PRIME CONTRACTOR NAME	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

_____	_____
Subcontractor Signature	Title/Date

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



Environmental
Protection Agency

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Approval Expires: 01/31/2011

**Disadvantaged Business Enterprise Program
DBE Subcontractor Performance Form**

NAME OF SUBCONTRACTOR ¹		PROJECT NAME
ADDRESS		BID/PROPOSAL NO.
TELEPHONE NO.	E-MAIL ADDRESS	
PRIME CONTRACTOR NAME		
CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME	PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR
<p>Currently certified as an MBE or WBE under EPA's DBE Program? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Signature of Prime Contractor Date _____ Print Name Title _____</p> <p>Signature of Subcontractor Date _____ Print Name Title _____</p>		

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



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Approval Expires: 01/31/2011

**Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form**

BID/PROPOSAL NO.	PROJECT NAME
NAME OF PRIME BIDDER/PROPOSER	E-MAIL ADDRESS
ADDRESS	
TELEPHONE NO.	FAX NO.

The following subcontractors¹ will be used on this project:

COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATED DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?

I certify under penalty of perjury that the foregoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

Signature of Prime Contractor

Date

Print Name

Title

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

OERI CONTRACT PROVISIONS

(State Office of Economic Recovery and Investment)

By submission of a proposal, Contractor agrees to comply with the following provisions. Failure to comply with any and all provisions herein may be cause for the contracting agency to issue a cancellation notice to a contractor.

Reporting Requirements

The Contractor is notified that this project will be financed with *American Recovery and Reinvestment Act of 2009* (hereinafter, "ARRA") Funds. The Contractor shall ensure that all subcontracts and other contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to Title XV, Section 1512 of the ARRA, the State shall require that the Contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this contract from the Contractor's own workforce and any sub-contractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the contract.

Posting with the Local Employment Security Commission

In addition to any other job postings the Contractor normally utilizes, the Office of Economic Recovery & Investment (hereinafter, "OERI") requires that the Contractor shall post with the local Employment Security Commission Office all positions for which he intends to hire workers as a result of being awarded this contract. Labor and semiskilled positions must be posted for at least 48 hours before the hiring decision. All other positions must be posted a minimum posting of five days before the hiring decision. The Contractor and any Subcontractor shall report the new hires in the manner prescribed by the Employment Security Commission and the OERI.

Required Contract Provision to Implement ARRA Section 902

Section 902 of the ARRA requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

- (1) examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Authority of the Inspector General provision

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

Buy American provision

Section 1605 of the ARRA requires that iron, steel and manufactured goods used in public buildings or public works projects be manufactured in the United States. Contractor agrees to abide by this provision and shall maintain records of such purchases for inspections by authorized agents of the State of North Carolina and federal agencies. The Contractor must obtain written exception from this provision from the agency issuing the contract.

Wage Rate Provision

Section 1606 of the ARRA requires that all laborers and mechanics employed by contractors and subcontractors with funds from the ARRA shall be paid wages at rates not less than the prevailing wage rate under the Davis-Bacon Act. The contractor agrees that by the submission of a proposal in response to a solicitation funded in whole or in part with recovery funds, continuous compliance will be maintained with the Davis-Bacon Act.

Availability and Use of Funds

Contractors understand and acknowledge that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.

Whistleblower Provisions

Contractors understand and acknowledge that Article 14 of Chapter 124, NCGS 126-84 through 126-88 (applies to the State and state employees), Article 21 of Chapter 95, NCGS 95-240 through 85-245 (applies to anyone, including state employees), and Section 1553 of the Recovery Act (applies to anyone receiving federal funds), provide protection to State, Federal and contract employees.

Outsourcing outside the USA without Specific Prior Approval Provision

Contractor agrees not to use any recovery funds from a contract or any other performance agreement awarded by the State of North Carolina, its agencies, or political subdivisions for outsourcing outside of the United States, without specific prior written approval from the agency issuing the contract.

Federal, State and Local Tax Obligations

By submission of a proposal, contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

Anti-Discrimination and Equal Opportunity

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

Office of State Budget and Management Access to Records

OERI requires that the contractor and subcontractor agree to allow the Office of State Budget and Management internal auditors and state agency internal auditors access to records and employees pertaining to the performance of any contract awarded by a public agency.