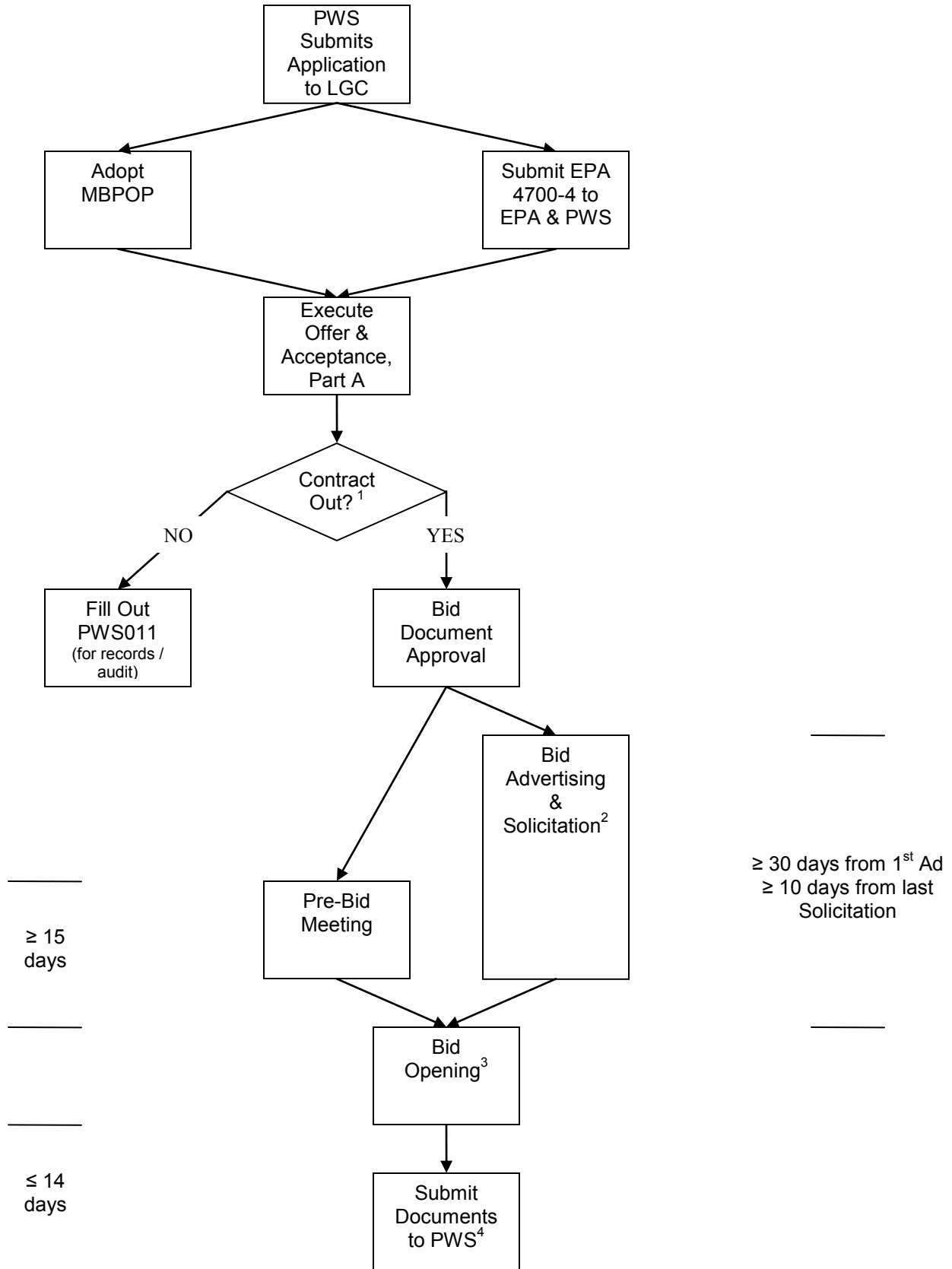


Owner's DBE Flow Chart



## Owner's DBE Flow Chart Footnotes

<sup>1</sup> Contracting may be used to acquire or use construction, services, equipment (e.g. backhoes, cranes, etc.), or supplies (e.g. concrete, water meters, pipe, etc.). Purchase orders and rental agreements are also considered contracts for these purposes.

<sup>2</sup> The following resources must be used for advertising and direct solicitation of contractors:\*

- VendorLink (<https://www.ips.state.nc.us/ips/vendor/searchVendor.aspx>)
- MBDA Phoenix Database (1-877-500-MBEC or 1-877-500-6232)
- One of the following:
  - SBA's SUB-Net (<http://web.sba.gov/subnet/>) OR
  - DoD's Central Contracting Registration (<http://www.ccr.gov/> or [http://dsbs.sba.gov/dsbs/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm))

<sup>3</sup> Fill out the following forms for your records and retain for possible audit and inspection:

- PWS001\*
- PWS003\*
- PWS010

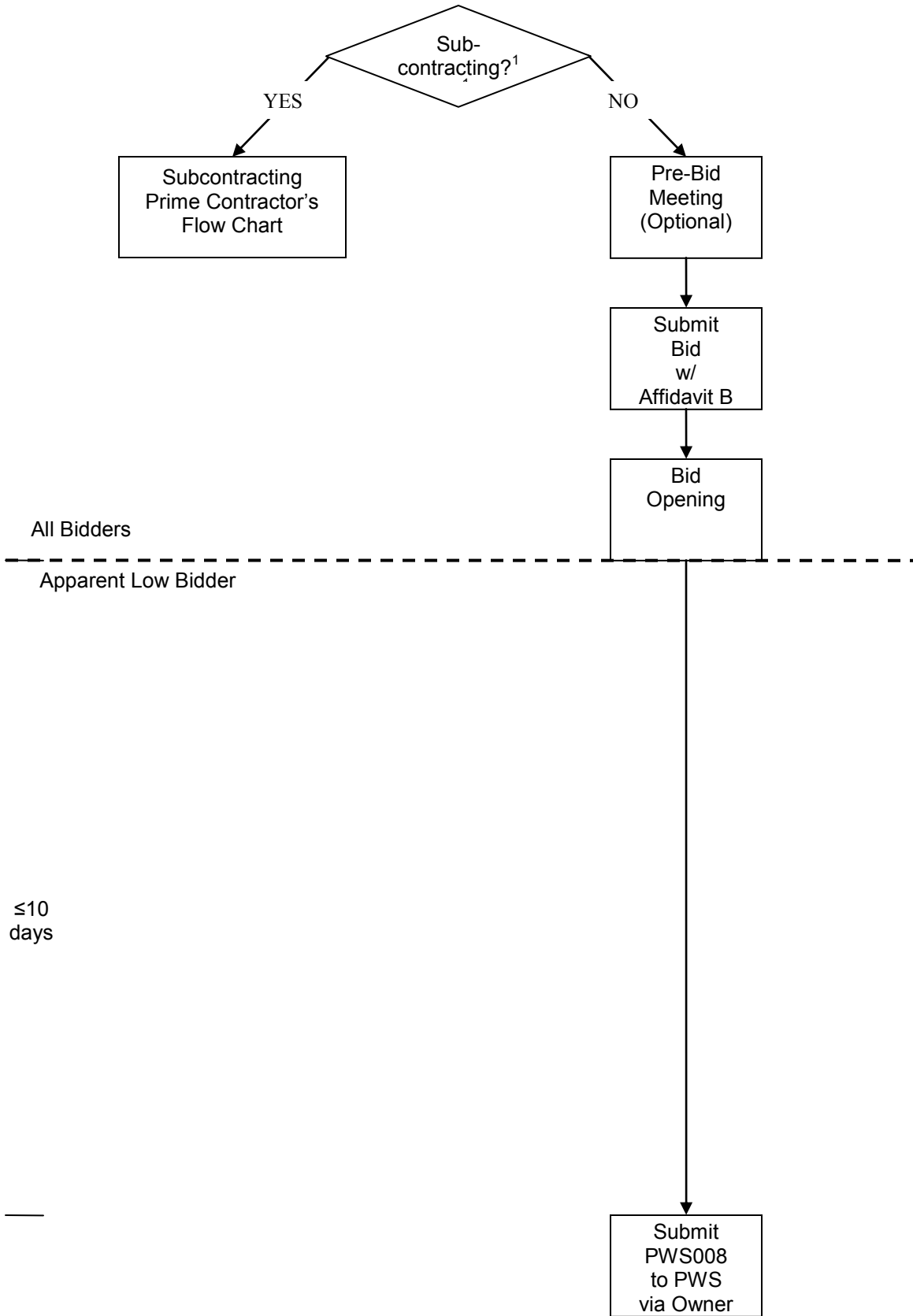
Provide the pre-bid meeting attendance list to PWS.

<sup>4</sup> Submit the following to PWS:

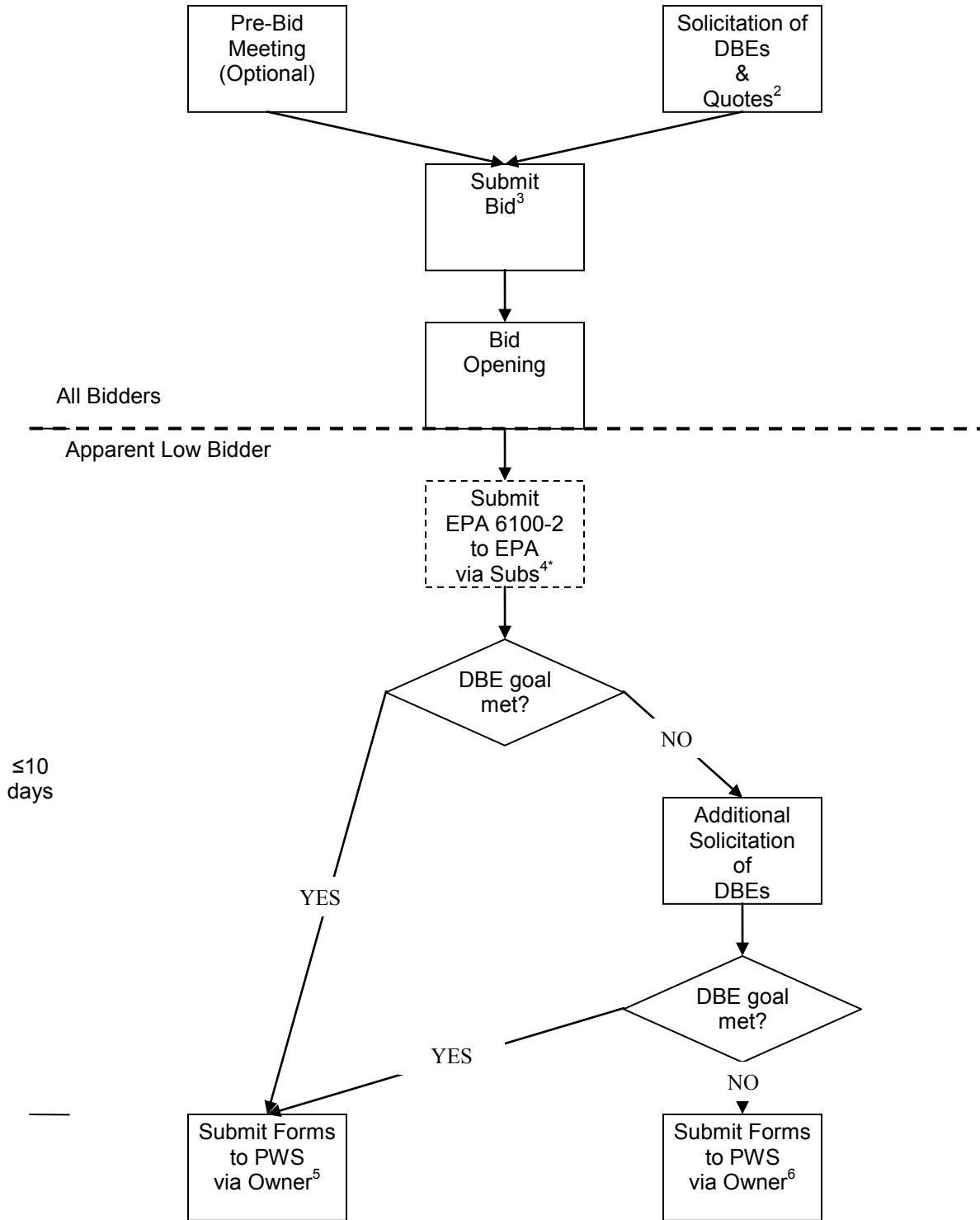
- The certified bid tabulation.
- The apparent low bid.
- All Contractor DBE documents.

\* DWSRF projects only.

Contractor's DBE Flow Chart



Subcontracting Prime Contractor's DBE Flow Chart



## Contractor's DBE Flow Chart Footnotes

<sup>1</sup> Subcontracting may be used by the prime contractor to acquire or use construction, services, equipment (e.g. backhoes, cranes, etc.), or supplies (e.g. concrete, water meters, pipe, etc.). Purchase orders and rental agreements are also considered subcontracts for these purposes.

<sup>2</sup> The following resources must be used for advertising and direct solicitation of contractors\*:

- VendorLink (<https://www.ips.state.nc.us/ips/vendor/searchVendor.aspx>)
- MBDA Phoenix Database (1-877-500-MBEC or 1-877-500-6232)
- One of the following:
  - SBA's SUB-Net (<http://web.sba.gov/subnet/>) OR
  - DoD's Central Contracting Registration (<http://www.ccr.gov/> or [http://dsbs.sba.gov/dsbs/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm))

<sup>3</sup> Submit the following forms with bid:

- Affidavit A
- PWS001\*
- Draft version of EPA 6100-4

<sup>4</sup> Provide EPA 6100-2 forms to each DBE subcontractor with instructions so that they may send this form to the EPA.\*

<sup>5</sup> Submit the following forms to the Owner within 10 days of being informed of being the apparent low bidder:

- Affidavit C
- PWS003 (upon request)\*
- PWS008 (one debarment certification for prime and each sub-contractor)\*
- EPA 6100-4 (final certified version for contract approval)
- EPA 6100-3 (one form for each subcontractor)\*
- DBE Certifications

<sup>6</sup> Submit the following forms to the Owner within 10 days of being informed of being the apparent low bidder:

- Affidavit C
- Supporting Documents for Affidavit C
- PWS003\*
- PWS008 (one debarment certification for prime and each sub-contractor)\*
- EPA 6100-4 (final certified version for contract approval)
- EPA 6100-3 (one form for each subcontractor)\*
- DBE Certifications

\* DWSRF projects only.



**Owner's Compliance Package (State)  
(OCP-S)**



PUBLIC WATER SUPPLY

**Owner's DBE (Disadvantaged Business Enterprise) Compliance Package for  
North Carolina Water Supply Projects that Are State Funded**

**Includes the State Special Conditions Package**



**Revised 4 November 2011**

## Owner's Compliance Package (State)

### Owner's Compliance Package

The attached instructions and forms comprise the State Owner's Compliance Package (OCP-S). This package assists Owners of water infrastructure projects with state funding to document compliance with applicable State Statutes, Rules and Policies regarding outreach to disadvantaged business enterprises (DBEs).

The Owner of a project with state funding offered by the Department of Environment and Natural Resources, Division of Water Resources, Public Water Supply Section (PWS) shall include in the bid documents the enclosed State Special Conditions Package. After bidding, the Owner shall submit all required documentation, including that from contractors, in the format that this OCP-S describes, to PWS, at one of the addresses below.

**Mail Address:**

Public Water Supply Section  
1634 Mail Service Center  
Raleigh, North Carolina 27699-1634

**Physical and Courier (e.g., FedEx) Address:**

Public Water Supply Section  
2728 Capital Boulevard  
Room 1B501  
Raleigh, NC 27604  
919-733-2321

**This OCP-S is not adequate for projects funded by the Drinking Water State Revolving Fund (DWSRF) loan.** The Owner with DWSRF funding shall **include both the State Special Conditions Package and the DWSRF Special Conditions Package** in the technical specifications (or equivalently, in the bid documents) **for each federally-funded project**. The Owner with DWSRF funding shall submit to PWS both the documentation required by this OCP-S and the documentation required by the DWSRF program.

This Owner's Compliance Package includes the following sections:

1. Instructions for Owner
2. Owner's Good Faith Efforts – STATE
3. Quick Reference for Requirements of Session Law 2001-496 (Senate Bill 914)
4. DBE Forms:
  - a) Owner's Affidavit of Good Faith Efforts (PWS010)
  - b) Owner's Intent to Perform Work with Own Workforce (Force Account)(PWS0011)
5. State DBE Checklist for Owners
6. State Special Conditions Package for Prime Contractor

**1. Instructions for Owner**

1. In accordance with G.S. 143-128.2(a), the Owner shall have a resolution establishing a "verifiable percentage goal" for DBE participation. The Owner has certified (as part of the application process) that the resolution applies to this project.
2. In accordance with G.S. 143-128.2 (e)(1), the Owner shall have a written minority business participation outreach plan.
3. In accordance with G.S. 143-128.2 (e)(3), the Owner shall maintain a list of firms that have requested to be notified of (sub)contracting opportunities (DBE solicitation list).
4. **The Owner shall include the State Special Conditions Package in the construction specifications for each state-funded project.**
5. **The Owner shall not award contract without the written consent of Public Water Supply.**
6. In accordance with G.S. 143-128.2 (b) and (e), the Owner shall make **ALL** of the good faith efforts described under "**Owner's Good Faith Efforts - STATE**" in this Owner's Compliance Package.

To give bidders sufficient time to solicit minority subcontractors, **PWS strongly recommends** that, no less than 15 days before the bid opening, the Owner hold a pre-bid meeting and distribute the Owner's DBE solicitation list to bidders.

7. The Owner shall complete Items 1 through 6 on the cover sheet of the State Special Conditions Package. Bidders will use this information to submit responsible and responsive bids. Instructions for completing these items appear below:
  1. **"Project Owner"** - List the name of the Owner of the project. If the Project Owner is not the same as the "applicant" that originally sought Public Water Supply (PWS) funding, please add the "applicant" name in parentheses  
Example: *City of Raleigh (Rolesville)*
  2. **"Project and Contract Name/Number"** – Assign a name to the overall project (the project for which the Owner originally sought PWS funding). Assign a name or other identifier (e.g., "Contract C") to the portion of the overall project covered by the contract currently being bid.  
Example: *Raleigh to Rolesville Interconnect (Contract C: Booster Pump Station)*
  3. **"Project WIF Number(s)"** – List **all** WIF numbers (pertaining to any part of the overall project – not just the contract currently being bid) of funding applications for which the Owner has sought PWS funding.  
Example: *WIF-0629, WIF-0333, WIF-0915, -0915A, -0915B*
  4. **"Response Time"** – The proposed low bidder will depend on this information to determine **when** to submit Affidavit C.  
Example #1: *72 hours*  
Example #2: *four business days*

Owner's Compliance Package (State)

5. "The 'verifiable percentage goal'..." Self-explanatory.
6. "This verifiable percentage goal..." Self-explanatory.
8. The Owner shall complete the "*Owner's Affidavit of Good Faith Efforts*" (Form PWS010) or the "*Owner's Intent to Perform Work with Own Workforce (Force Account)*" (Form PWS011), as applicable. These forms shall be retained for the Owner's records and inspections or audits.
9. The Owner shall forward to the appropriate Public Water Supply Loans and Grants project review engineer, all of the Owner's (if requested) and Contractor's DBE documentation, including all those items described in the checklists. Note that the Owner is not a passive conduit for the proposed Contractor's DBE documentation. The Owner "shall require contractors to make good faith efforts". [G.S. 143-128.2(b)] **By submitting the proposed Contractor's DBE documentation to PWS for review, the Owner finds the proposed Contractor's documentation of good faith efforts adequate.**
10. After finding DBE documentation adequate, Public Water Supply (PWS) will issue written approval for the Owner to award the contract to the Contractor.
11. After being awarded the contract, the Contractor will send to the Owner executed copies of each subcontract awarded to a DBE subcontractor. The Owner will forward these copies to PWS. **PWS will make no payments for a construction contract until PWS has received copies of each subcontract awarded to a DBE subcontractor.**  

Note that G.S. 143-128.2(c)(2) requires the contractor to provide to the Owner, within 30 days of award, a list of all identified subcontractors **whether DBE or not**. PWS requires this list to complete DBE review. This requirement is may be satisfied with the submission of the "*DBE Subcontractor Utilization Form*" (Form EPA 6100-4).
12. G.S. 143-128.2(d) governs changes from the subcontractor's list provided with the bid documents, and requires good faith efforts be made to find substitute DBE subcontractors:
  - a) If at any time during the construction of a project it becomes necessary to replace a minority business subcontractor, the Contractor shall immediately advise the Owner and the Public Water Supply project review engineer, in writing, of the circumstances involved. The Prime Contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.
  - b) If at any time during the construction of a project additional subcontracting opportunities become available, the Contractor shall make a good faith effort to solicit subcontract bids from minority businesses.
  - c) A bidder submitting Affidavit B (showing that the bidder does not propose to use any subcontracting) is not required to document additional good faith efforts (e.g., not required to submit Affidavits C). However, if the bidder later decides to subcontract **any** part of the work, the bidder must make and document good faith efforts.

**3. Owner's Good Faith Efforts - STATE**

As laid out in G.S. 143-128.2 (e) the Owner must make all of the good faith efforts listed below:

Before awarding a contract, a public entity shall do the following:

- (1) Develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and nonminority businesses.
- (2) Attend any scheduled prebid conference. (Optional)
- (3) At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
  - a. A description of the work for which the bid is being solicited.
  - b. The date, time, and location where bids are to be submitted.
  - c. The name of the individual within the public entity who will be available to answer questions about the project.
  - d. Where bid documents may be reviewed.
  - e. Any special requirements that may exist.
- (4) Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.

Special Conditions Package for North Carolina Water Supply Projects that are State Funded  
**Quick Reference for Requirements of Session Law 2001-496 (Senate Bill 914)**

<b>Owner's Responsibilities</b>			
<b>Authority</b>	<b>Action</b>	<b>Documentation/ Responsibility</b>	<b>When Required</b>
G.S. 143-128.2(a)	Adopt a 10 % minority goal. Local entity may continue to use a different verifiable goal adopted prior to December 1, 2001. Local entity may establish a different verifiable goal based on proper documentation.	<ul style="list-style-type: none"> <li>• Provide a Resolution that establishes a "verifiable percentage goal."</li> <li>• Provide a Certification that states the "verifiable percentage goal" applies to the current project.</li> <li>• If verifiable goal different than 10%, then provide sufficient evidence to justify the goal (e.g. disparity study).</li> </ul>	Resolution and Certification typically submitted with application, required before approval of contract.
G.S. 143-129(a) amended by S. L. 2001-496	Formal Bidding	<ul style="list-style-type: none"> <li>• Threshold increased from \$100,000 to \$300,000 for construction. <b>DBE requirements apply.</b></li> <li>• Threshold increased from \$30,000 to \$90,000 for purchase of materials, supplies, and equipment.</li> </ul>	N/A
G.S. 143-131(b)	Informal Bidding	<ul style="list-style-type: none"> <li>• Threshold increased from \$5,000 to \$300,000 for construction.</li> <li>• Keep (but do not submit) documentation of all DBE Good Faith Efforts.</li> <li>• No requirement to formally advertise. Must submit documentation of efforts to recruit DBEs, including type of project, total \$ amount of project, and total \$ amount to DBE contractor.</li> <li>• Use informal bid projects to increase DBE participation.</li> </ul>	N/A
G.S. 143-128.2(e)	<u>Good Faith Efforts (GFE)</u> <ol style="list-style-type: none"> <li>1. Develop and implement a DBE outreach program</li> <li>2. Pre-bid Conference</li> <li>3. Notify DBEs</li> <li>4. Use Media as appropriate</li> </ol>	<ul style="list-style-type: none"> <li>• Solicit DBE firms and make it feasible for DBEs to submit successful bids.</li> <li>• Identify DBE firms that can perform projects (i.e. create DBE list).</li> <li>• Promote interaction between DBEs and non-DBE firms.</li> <li>• Discuss and ensure DBE program is reviewed. Contact HUB office for inquiries.</li> <li>• Notice to DBEs to include: description of work, date, time and location for bid submittal, contact person, where bid documents can be reviewed and any other special requirements.</li> <li>• Use media outlets, general circulation newspapers, local and statewide DBE newspapers and radio stations.</li> </ul>	Send notice of bidding opportunity at least 10 days prior to scheduled bid opening

This quick reference outlines the changes made by Session Law 2001-496 (Senate Bill 914).

# Owner's Checklist and Affidavit of the Good Faith Efforts

Project Owner \_\_\_\_\_ Project WIF # \_\_\_\_\_

Project Name \_\_\_\_\_

Affidavit of \_\_\_\_\_  
(Name of Owner's Authorized Representative)

**I have made a good faith effort to comply with G.S. 143-128.2(e) under each of the following areas:**

*(A "public entity" is required to make all of the efforts identified below (and not marked optional) in order to have achieved a "good faith effort")*

- Developed and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and nonminority businesses.
- Attended any scheduled prebid conference. (Optional)
- At least 10 days prior to the scheduled day of bid opening, notified minority businesses that have requested notices from the Owner for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification included the following:
  - a. A description of the work for which the bid is being solicited.
  - b. The date, time, and location where bids are to be submitted.
  - c. The name of the individual within the public entity who will be available to answer questions about the project.
  - d. Where bid documents may be reviewed.
  - e. Any special requirements that may exist.
- Utilized other media, as appropriate, likely to inform potential minority businesses of the bid being sought.

I have attached to this affidavit the following documentation of the Owner's good faith efforts:

- the Owner's minority business participation outreach plan,
- the roster or attendance list from any optional prebid meeting,
- the solicitation list the Owner maintains pursuant to G.S. 143-128.2 (e)(3),
- printouts of any list of contractors developed from the Office of Historically Underutilized Businesses or any other web-based resource,
- The Owner's affidavits of publication, or other documentation of advertising,

I have attached to this affidavit the following documentation of each proposed Contractor's good faith efforts:

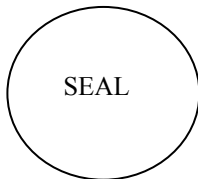
- Appropriate affidavits of good faith efforts for each proposed Contractor,
- DBE certifications for each proposed DBE subcontractor,
- For each proposed Contractor that completed Affidavit C, all of the documentation listed in the Instructions for Affidavit C, and
- Verifications of subcontracts. (Optional at this time, required before reimbursement)

The undersigned hereby certifies that the Owner has complied with the steps laid out in the resolution of this unit of local government and in the minority business participation outreach plan applying to this project, and that he or she has read this certification and is authorized to bind the Owner to the commitments herein contained.

Date: \_\_\_\_\_ Authorized Representative: \_\_\_\_\_

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

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



State of North Carolina, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

**My commission expires** \_\_\_\_\_

# State of North Carolina - Owner's Intent to Perform Work with Own Workforce. (Force Account)

Project Owner \_\_\_\_\_ Project WIF # \_\_\_\_\_

Affidavit of \_\_\_\_\_

(Name of Owner)

**I hereby certify that it is our intent to perform 100% of the work required for the**

**Project.**

(Name of Project)

In making this certification, the Owner states that the Owner will perform all elements of the work on this project with his/her own current work forces (force account), equipment and supplies; and

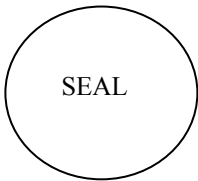
The Owner agrees to provide any additional information or documentation requested by the Public Water Supply Section in support of the above statement; and

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Owner to the commitments herein contained.

Date: \_\_\_\_\_ Authorized Representative: \_\_\_\_\_

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

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



State of North Carolina, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

**My commission expires \_\_\_\_\_**



## State DBE Checklist for Owners



PUBLIC WATER SUPPLY

- The Contractor's DBE documentation as outlined in the "*State DBE Checklist for Prime Contractors*."

Note that the Owner is not a passive conduit of the Contractor's DBE information (see G.S. 143-128.2(b), and the *Owner's Checklist and Affidavit of the Good Faith Efforts* Form PWS010 from this Owner's Compliance Package). By submitting the proposed Contractor's DBE documentation to PWS for review, the Owner is asserting that it has found the proposed contractor's documentation of good faith efforts adequate.

- Materials generally submitted with the application:
  - Resolution establishing verifiable percentage goal, and
  - Certification that the goal applies to this project.
- Materials to demonstrate compliance with State Requirements:
  - Owner's Minority Business Participation Outreach Plan (MBPOP),
  - The attendance list or roster for any optional Pre-Bid meeting,
  - One** of the following (as applicable):
    - Owner's Checklist and Affidavit of the Good Faith Efforts* Form (PWS010 from the Owner's Compliance Package), **or**
    - Owner's Intent to Perform Work with Own Workforce (Force Account)* Form (PWS011 from the Owner's Compliance Package).
  - Current DBE, MBE, and/or WBE certification for each proposed DBE, MBE, and/or WBE Prime Contractor.
  - The Owner's DBE or MBE solicitation list maintained pursuant to G.S. 143-128.2(e)(3).
  - The DBE documentation submitted by the proposed contractor(s).
- Note that additional requirements apply if the project includes DWSRF loan funding (including the requirement to submit information regarding first-tier subcontractors). Please include all materials related to DWSRF funding, as required by the DWSRF Special Conditions Package.
- The Owner must submit all of the required DBE information for Owner (if requested) and Prime Contractor(s) to PWS at one of the following addresses:

**Regular Mailing Address:**

Public Water Supply Section  
1634 Mail Service Center  
Raleigh, North Carolina 27699-1634

**Courier (e.g., FedEx) Address:**

Public Water Supply Section  
2728 Capital Boulevard  
Room 1B501  
Raleigh, NC 27604  
919-733-2321

Address the materials to the project review engineer, citing the WIF Number, Project Name and Contract Name / Number in the cover letter.

- All DBE Information, whether requested or not, is to be retained by the Owner for possible inspection and audit.



**State Special Conditions Package  
(State SCP)**



PUBLIC WATER SUPPLY

**Special Conditions Package for Prime Contractor DBE (Disadvantaged Business Enterprise) Compliance for North Carolina Water Supply Projects that are State Funded**



Revised 4 November 2011

**The Owner must complete Items 1 through 6 below before including this STATE Special Conditions Package in the bid documents.**

1. Project Owner: \_\_\_\_\_
2. Project and Contract Name/Number: \_\_\_\_\_  
\_\_\_\_\_
3. Project WIF Number(s): \_\_\_\_\_
4. Response Time: The response time for the proposed low bidder to submit Affidavit C (as applicable) is within \_\_\_\_\_ of being informed of being the proposed low bidder. Unless this cover sheet specifies otherwise, this response time is "within 72 hours of being informed of being the proposed low bidder."
5. The "verifiable percentage goal" (typically 10%) for participation by DBE firms is \_\_\_\_\_% of the total contract price.
6. This verifiable percentage goal is established by the Owner's resolution dated:  
\_\_\_\_\_

## State Special Conditions Package

### **State Special Conditions Package**

The attached instructions and regulations as listed below shall be incorporated into the construction specifications and comprise the State Special Conditions Package.

This package assists bidders for water infrastructure projects with state funding to document compliance with applicable State Statutes, Rules and Policies regarding outreach to disadvantaged business enterprises (DBEs).

#### **Notice to Owner and Prime Contractors**

The Owner shall **include this State Special Conditions Package** in the technical specifications (or equivalently, in the bid documents) **for each state-funded project**.

**This State Special Conditions Package is not sufficient for federally-funded (e.g., Drinking Water State Revolving Fund – DWSRF loan-funded) projects. The Owner shall include both this State Special Conditions Package and the appropriate Federal Special Conditions Package** in the technical specifications (or equivalently, in the bid documents) **for each federally-funded project**.

This State Special Conditions Package includes the following sections:

1. Instructions for Prime Contractor
2. State Special Provisions
3. Definitions
4. Bonds and Insurance
5. Contractor's Good Faith Efforts – STATE
6. Quick Reference for Requirements of Session Law 2001-496 (Senate Bill 914)
7. DBE Forms:
  - a) Identification of Minority Business Participation – REPLACED by EPA 6100-4
  - b) Affidavit A
  - c) Affidavit B
  - d) Affidavit C (Including Instructions)
  - e) Affidavit D – INCLUDED in Affidavit C
  - f) DBE Subcontractor Utilization (EPA 6100-4) Form (Including Instructions) – REPLACES Expected Subcontracts (PWS012) Form (Including Instructions)
8. State DBE Checklist for Prime Contractors:

**1. Instructions for Prime Contractor**

1. In accordance with G.S. 143-128.2(c), each bidder shall complete and submit a draft version of the "*DBE Subcontractor Utilization Form*" (Form EPA 6100-4), and Affidavits A **or** B (as applicable) **with the bid**. The proposed low bidder shall submit to the Owner Affidavit C within the response time established on the cover sheet of this State Special Conditions Package.

Note #1: An Affidavit B shows that the bidder does not propose to use any subcontracting. Subcontracting may be used by the prime contractor to acquire or use **construction, services, equipment (e.g. backhoes, cranes, etc.), or supplies (e.g. concrete, water meters, pipe, etc.). Purchase orders are also considered subcontracts for these purposes.** G.S. 143-128.2(d) governs changes to the subcontract list. See item #5 for implications.

Note #2: An Affidavit C showing the portion of the work to be expended with minority business enterprises is equal to or greater than the verifiable percentage goal "shall give rise to the presumption" of adequate good faith efforts. Public Water Supply will require no additional documentation from the Contractor, other than subcontracts with DBEs and certification for each proposed DBE subcontractor.<sup>1</sup>

Note #3: An Affidavit C showing that the portion of the work to be expended with minority business enterprises is below the verifiable percentage goal. In this case, Affidavit C requires additional documentation including the items listed in the "Instructions for Affidavit C" and DBE certification for each proposed DBE subcontractor.

Note #4: **Failure to file a required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the bid** [G.S. 143-128.2(c)].

Note #5: The term "Minority Business" as used in this State Special Conditions Package" includes Women's Businesses, as defined in G.S. 143-128.2(g)(1).

2. The Contractor shall provide to the Owner the following documentation of good faith efforts within **ten (10) days** of the notification of tentative award:
  - a) If the Contractor completed Affidavit C meeting or exceeding the verifiable percentage goal, Public Water Supply will require no additional documentation from the Contractor, other than verification of subcontracts and DBE certifications for each proposed DBE subcontractor. [G.S. 143-128.2(c)(1) a.]
  - b) If the Contractor completed Affidavit C without meeting the verifiable percentage goal, then the Contractor shall submit all of the documentation listed in the "Instructions for Affidavit C," including DBE certifications for each proposed DBE subcontractor, and the "*DBE Subcontractor Utilization Form*" (Form EPA 6100-4).

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<sup>1</sup> Speros Fleggas, P.E., Director of State Construction Office, "*Minority Business Enterprises*," MS PowerPoint Presentation, 20 February 2002, <http://ncinfo.iog.unc.edu/faculty/bluestein/senatebill914/SperosFleggas.ppt>, slide 12.

## State Special Conditions Package

"DBE certification" means a certification that the subcontractor is a *bona fide* DBE firm. PWS accepts registration in VendorLink as a WBE, MBE or DBE. PWS similarly accepts DBE, MBE and WBE certification by any unit of government, or a firm's presence on a government's DBE, MBE, or WBE list. However, firms that are classified only as small businesses (and that lack MBE, DBE or WBE certification) do not count toward this requirement. For example, a firm with a HUB status of "No" in VendorLink does not count unless it has a DBE certification by another unit of government.

3. After finding DBE documentation sufficient, Public Water Supply (PWS) will issue written approval for the Owner to award the contract to the Contractor.
4. After being awarded the contract, the Contractor will send to the Owner executed copies of each subcontract awarded to a DBE subcontractor. The Owner will forward these copies to PWS. **PWS will make no payments for a construction contract until PWS has received copies of each subcontract awarded to a DBE subcontractor.**

Note that G.S. 143-128.2(c)(2) requires the contractor to provide to the Owner, within 30 days of award, a list of all identified subcontractors **whether DBE or not**. PWS requires this list to complete DBE review. This requirement is may be satisfied with the submission of the "*DBE Subcontractor Utilization Form*" (Form EPA 6100-4).

5. G.S. 143-128.2(d) governs changes from the subcontractor's list provided with the bid documents, and requires good faith efforts be made to find substitute DBE subcontractors:
  - a) If at any time during the construction of a project it becomes necessary to replace a minority business subcontractor, the contractor shall immediately advise the Owner and the Public Water Supply project review engineer, in writing, of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.
  - b) If at any time during the construction of a project additional subcontracting opportunities become available, the Contractor shall make a good faith effort to solicit subcontract bids from minority businesses.
  - c) A bidder submitting Affidavit B (showing that the bidder does not propose to use any subcontracting) is not required to document additional good faith efforts (e.g., not required to submit Affidavits A or C). However, if the bidder later decides to subcontract **any** part of the work, the bidder must make and document good faith efforts.

## State Special Conditions Package

### **2. State Special Provisions**

- (a) Waterline crossing of all roads and streets shall be done in accordance with North Carolina Department of Transportation Policy and Procedure, and Rules governed by Public Water Supply, whichever is more stringent.
- (b) Construction shall be carried out so as to prevent backflow, cross connection of flows, and to maintain service as appropriate during construction. [NCAC 15A 18C .0406(b)]
- (c) Erosion Control procedures shall be taken during construction in accordance with state and local requirements, as appropriate.
- (d) Restore disturbed areas to original or better conditions.
- (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, shall show approval of either State or USDA. Use of all such chemicals and disposal of residues shall be in conformance with state and local regulations as appropriate and prior approval shall be required before disposal.
- (f) The construction of the project, including the letting of contracts in connection therewith, shall conform to the applicable requirements of State and local laws and ordinances.
- (g) The Owner is responsible for having a Professional Engineer to provide and maintain competent and adequate supervision and inspections to ensure construction is in accordance with approved plans and specifications. The Owner has signed an "*Application for Approval of Engineering Plans and Specification For Water Supply Systems*" stating that a professional engineer (licensed to practice in the State of North Carolina) shall submit a statement reflecting that adequate observations during and upon completion of construction (by the engineer or by a representative of the engineer's office who is under the engineer's supervision) indicates that construction was completed in accordance with approved plans and specifications.
- (h) The State Government shall have access to the project site and work at all times.
- (i) A certified operator and/ or distribution operator (depending on the system) shall be in place prior to the project completion. [NCAC 15A 18D .0206.]
- (j) The Capacity Development Program requirements codified in 15A NCAC 18C Section .0300 and .1304 apply. For additional information, please contact Julia Cavalier at 919-715-6643 or visit <http://www.ncwater.org/pws/capdevelop.htm>.

*These special provisions shall supersede any conflicting provisions of this contract other than the DWSRF Special Conditions Package.*

### 3. Definitions

Bidder is any party that submits a bid.

Contractor, Prime Contractor, Proposed Contractor – This State Special Conditions Package uses the terms Contractor, Prime Contractor, and "Proposed Contractor" interchangeably. After the bids are opened, the apparent low, responsible, responsive bidder is called the "Proposed Contractor" or "Contractor."

Contract, Subcontract – Contracts and subcontracts, for the purposes of this State Special Conditions Package, refer to any vehicle for procurement. This may include purchase orders, rental agreements, etc. that may be used to procure construction, equipment, services, or material supplies.

DBE, Minority Business, DBE Certification, Minority Business Certification – The terms Minority Business and DBE (Disadvantaged Business Enterprise) are used interchangeably in this State Special Conditions Package. Effectively, the class of Minority Businesses and DBEs are made up of WBEs (Woman Owned Business Enterprises) and MBEs (Minority Owned Business Enterprises). Further definition is given in G.S. 143-128.2(g).

A firm that holds a DBE, MBE or WBE certification from any state, local or tribal unit of government qualifies as a DBE. The following qualify as a DBE:

- a firm with a **HUB verified** status of **M, W** or **D** in VendorLink,
- a firm that provides a current DBE, MBE or WBE certification by any unit of government, or
- a firm listed as a DBE, MBE or WBE on a government's DBE, MBE, or WBE list.

A firm with a HUB status of "No" in VendorLink is not a DBE unless it has a DBE certification by another unit of government.

A small business that lacks certification as an MBE, WBE or DBE is not a DBE and does not count toward the three solicitation requirement.

Effective 25 May 2008, a WBE can no longer self certify.

First Tier Subcontractor – A first tier subcontractor is a subcontractor who contracts directly with the Prime Contractor rather than through an intermediate level subcontractor.

**4. Bonds and Insurance**

1. In compliance with G.S. 143-129, bids on Contracts are to be accompanied by a guarantee equivalent to five percent of the bid price in order to be considered for the following contracts:

- a) Construction contracts in excess of \$500,000.
- b) Apparatus, supply, material, or equipment purchases in excess of \$90,000.

The bid guarantee shall consist of a firm commitment such as cash, cashiers check, certified check or bid bond submitted with the bid. This deposit is to be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

2. G.S. 44A-26 requires that any Contract over \$50,000 on a project exceeding \$300,000 in total contract amount be accompanied by the following guarantees:

- a) 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. The performance bond is to ensure fulfillment of the contractors' obligations under the contract.
- b) Payment bond equal to 100 percent of the contract price. The payment bond is to ensure payment as required by statute to all persons supplying labor and material under the contract.

All bonds must be obtained from companies holding Certificates of Authority as acceptable sureties, issued by the U. S. Treasury.

**5. Contractor's Good Faith Efforts - STATE**

The good faith efforts to be made by the bidders/contractors (including subcontractors that further subcontract), as laid out in G.S. 143-128.2 (f), follow. Each contractor must earn at least 50 points with the good faith efforts listed below. [1 NCAC 30 I .0101]

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. (10 points)
- (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. (10 points)
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. (15 points)
- (4) Working with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. (10 points)
- (5) Attending any prebid meetings scheduled by the public owner. (10 points)
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. (20 points)
- (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing. (15 points)
- (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. (25 points)
- (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. (20 points)
- (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. (20 points)

## 6. Quick Reference for Requirements of Session Law 2001-496 (Senate Bill 914)

### Bidders' Responsibilities

Authority	Action	Documentation/ Responsibility	When Required
G.S. 143-128.2(c)(1) including (a) & (b)	Provide an affidavit listing GFE. If performing all of the work with your own workforce, you must submit an affidavit stating such.	Either " <i>DBE Subcontractor Utilization Form</i> " and Affidavit A or Affidavit B, as appropriate	"on the bid"
G.S. 143-128.2 (c)(1)(a)	Provide more detailed documentation of list of DBEs solicited or awarded, amount contracted, and percentage. If not meeting the "verifiable percentage goal," then document your solicitation efforts (Affidavit C).	Affidavit C (including documentation specified in Affidavit C), as appropriate	10 days after notification of apparent low bidder (or as otherwise directed by bid documents)
G.S. 143-128.2(c)(2)	Provide a listing of all expected subcontracts (whether DBE or not).	Provide " <i>DBE Subcontractor Utilization Form</i> " (Form EPA 6100-4), listing all expected subcontracts (DBE or not).	In practice, required for approval of DBE efforts. By statute, required within 30 days.
G.S. 143-128.2(f)	<p>Earn a minimum of fifty points with the good faith efforts listed below.</p> <ol style="list-style-type: none"> <li>1. Contact DBE using resources available. (10 points)</li> <li>2. Make plans &amp; specification available for review. (10 points)</li> <li>3. Breakdown or combine elements of work into economically feasible units of work. (15 points)</li> <li>4. Work with DBE trade community or contractor organizations that provide assistance in recruiting DBE firms. (10 points)</li> <li>5. Attend pre-bid meetings scheduled by the public owner. (10 points)</li> <li>6. Provide assistance in getting required bonding or insurance or provide alternatives to bonding or insurance for subcontractors. (20 points)</li> <li>7. Negotiate in good faith with interested minority businesses and not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing. (15 points)</li> <li>8. Provide assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assist minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. (25 points)</li> <li>9. Negotiate joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. (20 points)</li> <li>10. Provide quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. (20 points)</li> </ol>	<ul style="list-style-type: none"> <li>• Use media outlets, general circulation newspapers, local and statewide DBE newspapers and radio stations. List provided by Owner or other state and local agencies.</li> <li>• Identify DBEs on bid list.</li> </ul>	Provide notice at least 10 days prior to scheduled opening bids indicating work to be performed.

This quick reference outlines the changes made by Session Law 2001-496 (Senate Bill 914).

**7. DBE Forms**

# State of North Carolina AFFIDAVIT A – Listing of the Good Faith Effort

Project Owner \_\_\_\_\_ Project WIF # \_\_\_\_\_

Project Name \_\_\_\_\_

Affidavit of \_\_\_\_\_

(Name of Bidder)

**I have made a good faith effort to comply under the following areas checked:**

*(The bidder must earn at least 50 point from the listed good faith efforts for the bid to be responsive. [1 NCAC 30 I.0101])*

- 1 - (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2 - (10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or provided these documents to them at least 10 days before the bids are due.
- 3 - (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 - (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 - (10 pts)** Attended prebid meetings scheduled by the public owner.
- 6 - (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 - (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. (Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.)
- 8 - (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- 9 - (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

In accordance with G.S. 143-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

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

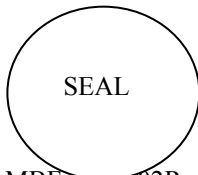
Title: \_\_\_\_\_

State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

**My commission expires** \_\_\_\_\_



**State of North Carolina**

**AFFIDAVIT B**

**Intent to Perform Contract with Own Workforce.**

Project Owner \_\_\_\_\_ Project WIF # \_\_\_\_\_

Affidavit of \_\_\_\_\_

(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_

\_\_\_\_\_ contract.

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces, equipment and supplies; and

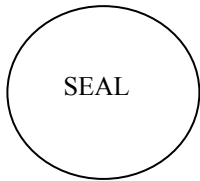
The Bidder agrees to provide any additional information or documentation requested by the Owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

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

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



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

**My commission expires** \_\_\_\_\_

**State of North Carolina**

**AFFIDAVIT C**

**Portion of the Work to be Performed by Minority Firms**

Project Owner \_\_\_\_\_ Project WIF # \_\_\_\_\_

Amount of Bid \$ \_\_\_\_\_

\*\*\*\*\*NOTE: THIS FORM IS NOT TO BE SUBMITTED WITH THE BID PROPOSAL\*\*\*\*\*

**ONLY THE PROPOSED LOW BIDDER** submits this affidavit.

Unless the Owner specifies otherwise on the cover sheet of the STATE Special Conditions Package, a proposed low bidder (who did not submit Affidavit B) must submit this affidavit within 10 days of being informed of being the proposed low bidder.

Affidavit of \_\_\_\_\_: I do hereby certify that on the \_\_\_\_\_ contract  
(Name of Bidder)  
\_\_\_\_\_ contract  
(Name of Project)

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as listed on the accompanying EPA Form 6100-4. Listed firms will be contracted as construction subcontractors, vendors, suppliers or providers of professional services.

Pursuant to G.S. 143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

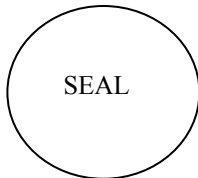
If the portion of the work to be executed by minority businesses {defined in G.S. 143-128.2(g)} is less than the verifiable percentage goal established by the Owner's resolution {usually 10% of the total contract price}, then documentation {as required in the "Instructions for Affidavit C"} of good faith efforts employed in pursuit of this goal is provided to the Owner. Failure to provide the required documentation may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

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

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



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

**My commission expires** \_\_\_\_\_

## Instructions for Affidavit C

When submitting Affidavit C with the indication that the bidder has not achieved the verifiable percentage goal for DBE participation, the bidder must document the good faith efforts claimed in Affidavit A. The table below outlines the required documentation for each good faith effort listed in Affidavit A.

<b>If you claimed this Good Faith Effort on Affidavit A...</b>	<b>then you must substantiate it with the following documentation (cited in Affidavit C):</b>
<p>1. Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed</p>	<p>1. "PWS requires three solicitations to DBEs for <u>each subcontract specialty</u> – if three DBEs are listed in the source solicitation lists for that subcontract specialty. In an effort to find three DBEs to solicit, search any Owner-provided list, and search the VendorLink website. PWS also strongly recommends searching the NCDOT website.</p> <p>2. Each solicitation must include the following information listed in G.S. 143-128.2 (e)(3) a through e:</p> <ul style="list-style-type: none"> <li>a. A description of the work for which the bid is being solicited.</li> <li>b. The date, time, and location where bids are to be submitted.</li> <li>c. The name of the individual within the public entity who will be available to answer questions about the project.</li> <li>d. Where bid documents may be reviewed.</li> <li>e. Any special requirements that may exist.</li> </ul> <p>3. For any subcontract specialty where a DBE was solicited and responded but not used, provide proposals from the DBE and the low bidder (to ensure the DBE was underbid).</p> <p>"DBE" means a DBE firm with a "<u>DBE Certification</u>" as described in the <b>Instructions for Prime Contractor</b>, Section 1 of this State Special Conditions Package.</p>
<p>2. Made the construction plans, specifications and requirements available for review by prospective minority businesses, or provided these documents to them at least 10 days before the bids are due.</p>	<p>Generally demonstrated by the Engineer and Owner making the approved plans and specifications and bid documents widely available (typically: Owner's office, Engineer's office, AGC, and/or F.W. Dodge).</p>
<p>3. Broke down or combined elements of work into economically feasible units to facilitate minority participation.</p>	<p>PWS will review the nature of subcontracts and determine if they are of reasonable size and scope.</p>
<p>4. Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.</p>	<p>Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.</p>
<p>5. Attended any prebid meetings scheduled by the public owner.</p>	<p>The Owner will submit a copy of the attendance list of any prebid meeting.</p>
<p>6. Provided assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.</p>	<p>Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.</p>

## Instructions for Affidavit C

<b>If you claimed this Good Faith Effort on Affidavit A...</b>	<b>then you must substantiate it with the following documentation (cited in Affidavit C):</b>
7. Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. (Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.)	<ol style="list-style-type: none"> <li>1. For subcontracts where a minority business firm is not considered the lowest responsible subcontract bidder, copies of quotes or responses received from each firm (DBE or not) responding to the solicitation.</li> <li>2. Letter detailing reasons for rejection of minority business due to lack of qualification.</li> </ol>
8. Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements... Assisted DBE in obtaining the same unit pricing as the bidder with bidder's suppliers.	<p>Letter documenting proposed assistance offered to minority business.</p> <p>Typically, the assistance is offered in the solicitation letter.</p>
9. Negotiated joint venture and partnership arrangements with minority businesses.	<p>The existence of such a joint venture or partnership itself, or letter documenting proposed joint venture and partnership arrangements offered to minority business.</p>
10. Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.	<p>Letter documenting proposed assistance offered to minority business.</p> <p>Typically, quick pay or other cash-flow assistance is offered in the solicitation letter.</p>



# EPA Form 6100-4 Subcontractor Utilization Form

*Each Prime Contractor must complete this form.  
Use additional sheets if necessary*



PUBLIC WATER SUPPLY

Draft version submitted with bid?

Final version for contract approval?

Project Owner	WIF Number
Bid Proposal Number	Project Name
Name of Prime Bidder / Proposer	Email Address
Address of Prime Bidder / Proposer	
Telephone Number	FAX Number
Page _____ of _____	

**The following subcontractors<sup>1</sup> will be used on this project:**

_____ Subcontract Discipline, product or service	_____ Subcontractor Address	_____ Subcontractor Phone	<input type="checkbox"/> Certified MBE?  <input type="checkbox"/> Certified WBE?  <input type="checkbox"/> US Citizen?
_____ Name of Subcontractor, if known	_____ Subcontractor Email	_____ Estimated Dollar Amount	
_____ Subcontract Discipline, product or service	_____ Subcontractor Address	_____ Subcontractor Phone	<input type="checkbox"/> Certified MBE?  <input type="checkbox"/> Certified WBE?  <input type="checkbox"/> US Citizen?
_____ Name of Subcontractor, if known	_____ Subcontractor Email	_____ Estimated Dollar Amount	
_____ Subcontract Discipline, product or service	_____ Subcontractor Address	_____ Subcontractor Phone	<input type="checkbox"/> Certified MBE?  <input type="checkbox"/> Certified WBE?  <input type="checkbox"/> US Citizen?
_____ Name of Subcontractor, if known	_____ Subcontractor Email	_____ Estimated Dollar Amount	

I certify under penalty of perjury that the forgoing 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** of Prime Contractor \_\_\_\_\_  
Print **Title** of Prime Contractor

<sup>1</sup> EPA defines "subcontractor" 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.



## Instructions for EPA Form 6100-4 Subcontractor Utilization Form



EPA Form 6100-4 (Subcontractor Utilization Form) replaces form PWS-012 (Expected Subcontracts).

### Instructions:

1. Under G.S. 143-128.2(c), each bid shall be accompanied by a draft version of this form listing which minority businesses that are intended to be used as subcontractors.
2. Under 40 CFR 33.302(g), each Prime Contractor shall complete this form when federal funds apply.
3. The "final" version, which is submitted for contract approval, shall list each subcontract discipline that is to be considered for **procurement of construction, equipment, services or material supplies** to the Prime Contractor – regardless of whether a subcontractor is already chosen. The subcontractor chosen for each discipline shall be listed – regardless of the subcontractor's minority status. If no **procurement of construction, equipment, services or material supplies** are to be made, mark form "N/A."
4. The Prime Contractor shall provide the "final" version of this form to the Owner within 10 days of bid opening.
5. The Owner shall provide the "final" version of this form, completed by the Prime Contractor, to the Public Water Supply section (PWS) within 14 days of bid opening
6. A revised version of this form shall be provided in the event that a subcontractor has been added to or removed from the project.
7. Use additional sheets as necessary.
8. The "**US citizen?**" question is required because, under 40 CFR 33.202, USEPA tracks DBE participation only for firms owned by citizens of the United States of America. Show whether the referenced DBE firm's owner is a citizen of the United States.



## 8. State DBE Checklist for Prime Contractors



PUBLIC WATER SUPPLY

1.  If the project is funded by DWSRF loan, all documentation required by the Federal Special Conditions Package.
2. A Prime Contractor who elects not to subcontract must submit the following form to the Owner:
  - a.  *Affidavit B*
3. A Prime Contractor who elects to subcontract must submit the following documentation to the Owner.
  - a.  DBE Certification for each claimed DBE subcontractor. “DBE Certification” is described in the “**Instructions for Prime Contractor**”, Section 1 of this State Special Conditions Package;
  - b.  *DBE Subcontractor Utilization Form* (EPA 6100-4), and
  - c.  *Affidavit A* and one of item i. and ii. below:
    - i.  If the Prime Contractor has met the **Verifiable Percentage Goal** established by the Owner’s resolution, and listed on this State Special Conditions package, then *Affidavit C*, or
    - ii.  If the Prime Contractor has failed to meet the **Verifiable Percentage Goal** established by the Owner’s resolution, and listed on this State Special Conditions package, then *Affidavit C* and all associated documentation as applicable, as described in the Instructions for Affidavit C.
      1. In particular, if the contractor claims good faith effort #1 (“*Contacted minority businesses that reasonably could have been expected to submit a quote...*”), the following documentation:
        - a.  *Subcontractor Utilization Form* (EPA 6100-4) showing all proposed subcontract disciplines (not just those disciplines where a DBE subcontractor is proposed).
        - b.  Documentation of three DBE solicitations in each subcontract discipline. Only solicitations to DBEs count toward this requirement.

How can you tell if a firm is a DBE? “DBE” means a DBE firm with a “DBE Certification” as described in the “**Instructions for Prime Contractor**”, Section 1 of this State Special Conditions Package.
      2.  All other documentation as detailed in the Instructions for Affidavit C.