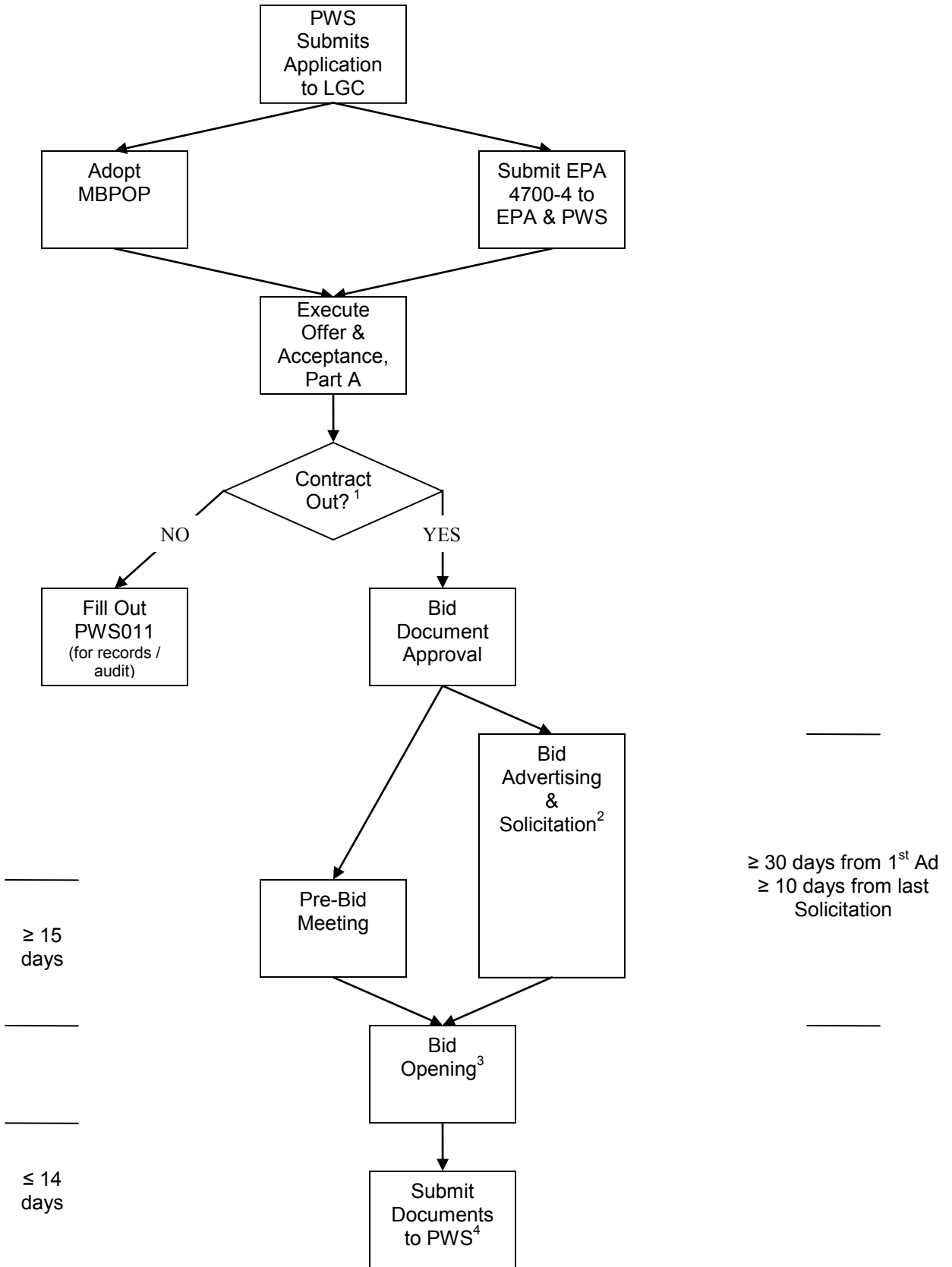


Owner's DBE Flow Chart



## 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

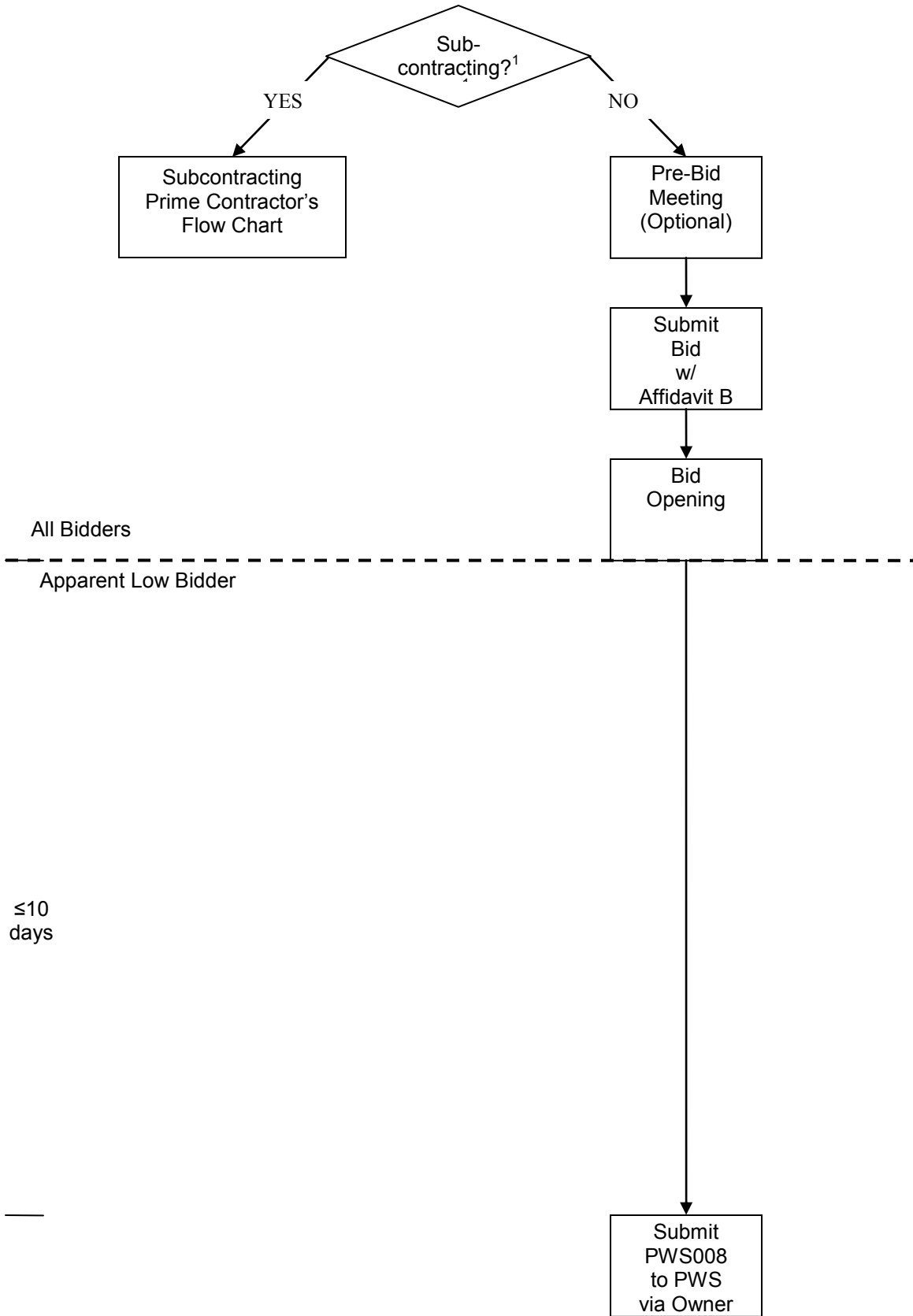
Provide the pre-bid meeting attendance list to PWS.

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

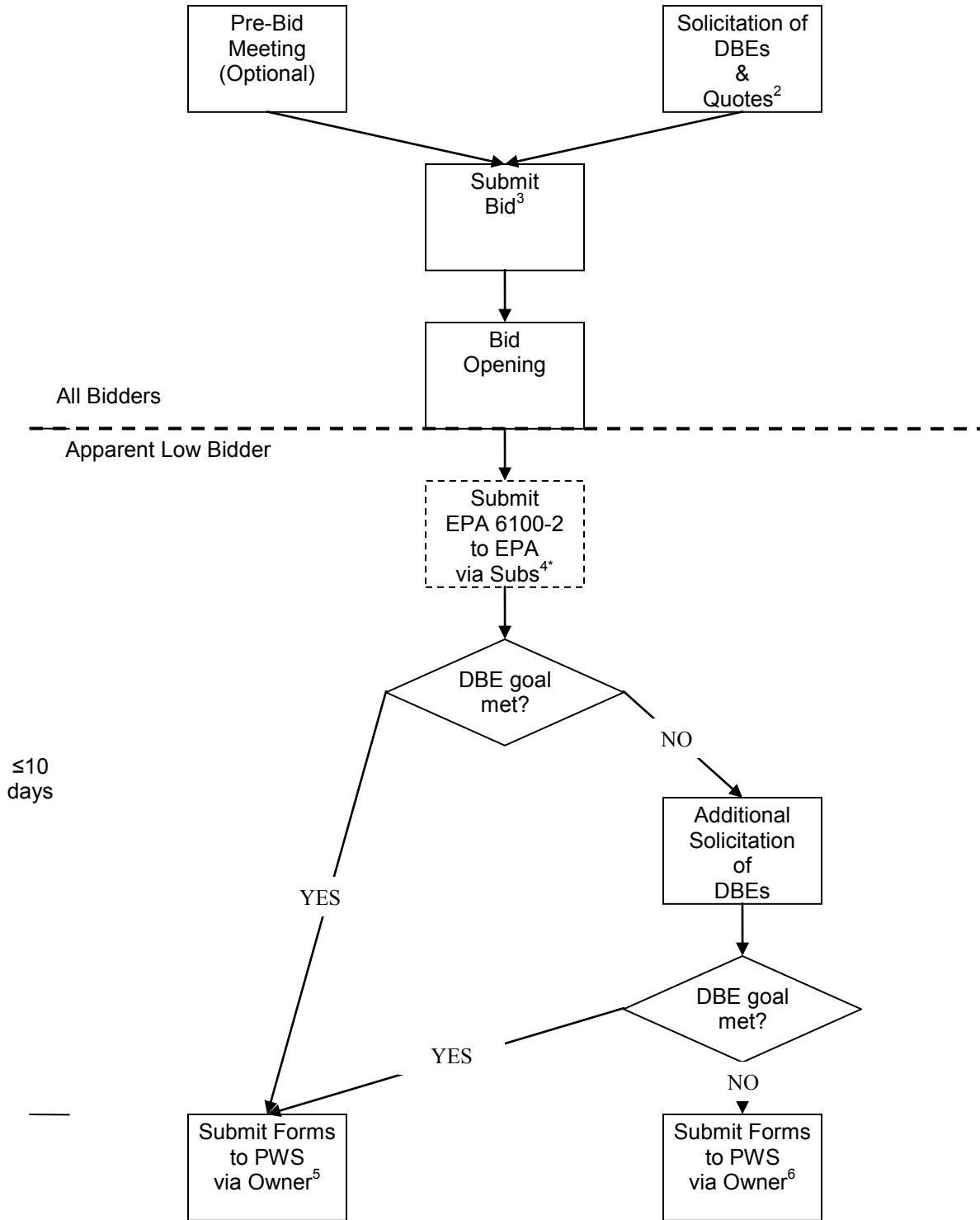
- The certified bid tabulation.
- The apparent low bid.
- All Contractor DBE documents.

\* 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.



## DWSRF Special Conditions Package (DWSRF SCP)



### **DBE (Disadvantaged Business Enterprise) Special Conditions Package for North Carolina Water Supply Projects that are funded by the Federal Drinking Water State Revolving Fund (DWSRF) Loan Program**

Revised 4 November 2011

**The Owner must complete Items 1 through 3 below before including  
this DWSRF Special Conditions Package in the bid documents.**

1. Project Owner: \_\_\_\_\_

2. Project and Contract Name/Number: \_\_\_\_\_  
\_\_\_\_\_

3. Project WIF Number(s): \_\_\_\_\_

## **DWSRF Special Conditions Package**

The attached instructions, forms and checklists make up the DWSRF Special Conditions Package.

This Special Conditions Package helps Owners of and Contractors on DWSRF-Funded drinking water infrastructure projects to document compliance with applicable Federal Statutes, Executive Orders, Rules and Policies; especially those regarding outreach to Disadvantaged Business Enterprises (DBEs) and Davis-Bacon and related Acts concerning employee compensation.

The Owner shall **include both this DWSRF Special Conditions Package and the appropriate State Special Conditions Package** in the technical specifications (or equivalently, in the bid documents) **for each project funded by the Federal Drinking Water State Revolving Fund (DWSRF) Loan Program.**

**This Special Conditions Package shall supersede any conflicting provisions of this contract, including any conflicting provisions of the State Special Conditions Package.**

### **Contents**

This DWSRF Special Conditions Package includes the following sections:

- I. Instructions for the Bid Process
  - A. General Instructions
  - B. Instructions for Owner
  - C. Instructions for Contractor
- II. Federal Attachments
  - A. Federal Special Provisions (Attachment No. 1)
  - B. Minority Business Enterprise Requirements for Federal DWSRF Loan Projects (Attachment No. 2) – including the "**six good faith efforts,**" and definitions
  - C. Bonds and Insurance (Attachment No. 3)
  - D. Davis-Bacon and Related Acts Provisions and Procedures (Attachment No. 4) – REPLACES Outlay Management (Attachment No. 4)
  - E. Executive Order 11246 §202 Requirements (Attachment No. 5) - DELETED per 30 May 2008 Email

- III. DBE Forms and Checklists
  - A. Forms to be completed by both Owner and Prime Contractors:
    - i. *Resources Used to Identify DBE Contractors* (PWS001)
    - ii. Instructions for PWS001
    - iii. *Record of DBE Solicitation* (PWS003)
    - iv. Instructions for PWS003
  - B. Forms to be completed only by Contractors (including subcontractors, as applicable):
    - i. *DBE Subcontractor Utilization Form* (Form EPA 6100-4)
    - ii. *Certification Regarding Debarment, Suspension and other Responsibility Matters* (PWS008)
    - iii. *Construction and Outlay Schedules* (PWS009) – DELETED
    - iv. *DBE Subcontractor Participation Form* (Form EPA 6100-2)
    - v. *DBE Subcontractor Performance Form* (Form EPA 6100-3)
  - C. DBE Checklists
    - i. DWSRF SCP Checklist for Contractors & Subs (includes Subcontracting Scheme Table)
    - ii. DWSRF SCP Checklist for Owners
- IV. Davis-Bacon and Related Acts Forms
  - A. Forms to be completed by Owner and displayed by Prime Contractors:
    - i. *Employee Rights under the Davis-Bacon Act* (WH-1321)
    - ii. *Derechos del Empleado bajo la Ley Davis-Bacon* (WH-1321 SPA)
  - B. Forms to be completed only by Contractors (including subcontractors, as applicable):
    - i. *Payroll* (WH-347)
  - C. Forms to be completed only by Owner:
    - i. *Labor Standards Interview* (SF-1445)

# I. Instructions for the Bid Process

### **INSTRUCTIONS - General**

1. Refer to Title VI of the Civil Rights Act of 1964, Pub. L. 88-352 as outlined in the EPA: Drinking Water State Revolving Funds Interim Final Rule, 40 CFR 9 and 35, August 2000, for more information.
2. Owners and all bidders are to read and thoroughly understand this DWSRF Special Conditions Package. Owners and bidders are responsible for fulfilling all the requirements herein.
3. Both the Owner and the Prime Contractor shall undertake the six good faith efforts (see Attachment No. 2) to utilize small and minority and women's business enterprises.
4. Both the Owner and the Prime Contractor who subcontracts shall complete the "*Resources Used to Identify DBE Contractors*" form (Form PWS001) showing the resources used to develop a solicitation list, and shall document the use of these resources.
5. Both the Owner and the Prime Contractor who subcontracts shall directly solicit firms identified in the solicitation list, shall provide documentation of each solicitation, and shall complete the "*Record of DBE Solicitation*" form (Form PWS003) showing the results of any direct solicitation.

### **INSTRUCTIONS – Owner**

1. **The Owner shall not award contract without the written consent of Public Water Supply.**
2. In accordance with G.S. 143-128.2, **in addition to** all requirements listed in this DWSRF Special Conditions Package, the Owner shall follow each requirement listed in the **Owner's Compliance Package**, particularly the following:  

**In accordance with G.S. 143-128.2 (b) and (e), the Owner shall make ALL the good faith efforts described under "Owner's Good Faith Efforts - STATE" in the State Special Conditions Package.**
3. The Owner shall complete Items 1 through 3 on the cover sheet of this DWSRF 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 Metropolis (Smallville)*
  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: *Metropolis to Smallville 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-0915, -0915A, -0915B*

4. In accordance with G.S. 143-128.2(a), the Owner shall have a resolution establishing a "verifiable percentage goal" of Disadvantaged Business Enterprise (DBE) participation. The Owner shall certify that the resolution applies to this project (this certification is generally included in the application for financial assistance).
5. In accordance with G.S. 143-128.2 (e)(1), the Owner shall have a minority business participation outreach plan.
6. The Owner shall **include both this DWSRF Special Conditions Package and the State Special Conditions Package** in the construction specifications **for each project funded by the DWSRF Loan Program**.
7. The Owner shall undertake the six good faith efforts listed in 40 CFR 33.301 (see Attachment No. 2) to utilize small and minority and women's business enterprises.
8. In addition to the usual advertisement in compliance with G.S. 143-129, the Owner shall use the following three resources to develop a solicitation list and/or advertise the opportunity for Prime Contractors:
  - a) Vendorlink – a state-operated website,
  - b) Department of Commerce's MBDA Phoenix Database, and either
  - c) The Small Business Association (SBA) or
  - d) DoD's Central Contracting Registration.

For additional information, including detailed instructions on the use of each resource, please see the instructions for "*Resources Used to Identify DBE Contractors*" form (Form PWS001).

9. The Owner shall complete the "*Resources Used to Identify DBE Contractors*" form (Form PWS001) showing the use of the three resources listed above to search for qualified DBE Prime Contractors to solicit or otherwise notify of the project. The Owner shall include backup documentation as described in the instructions for "*Resources Used to Identify DBE Contractors*" form (Form PWS001).
10. The Owner shall solicit at least three DBE Prime Contractors for each contract type. If the Owner's search of three resources identifies fewer than three DBE firms in a contract discipline, then the Owner shall solicit all identified DBE firms in that contract discipline.

11. The Owner shall complete the "*Record of DBE Solicitation*" form (Form PWS003) showing the results of solicitations for qualified DBE Prime Contractors:
  - a) The Owner shall document each solicitation. See the Instructions for Form PWS003 for information on acceptable documentation.
  - b) PWS strongly recommends that the Owner follow up each solicitation with at least one logged phone call. PWS suggests logging the phone call as a note on the documentation of solicitation (e.g., putting a note on the FAX confirmation sheet: "Called at 10:00 on 13<sup>th</sup> April, left message").
12. Within 14 days following bid opening, the Owner shall forward to the appropriate Public Water Supply Loans and Grants project review engineer, all the 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.**

Recall that the Owner shall also meet the requirements of the Owner's Compliance Package (State) and the State Special Conditions Package.

#### **INSTRUCTIONS – Contractors (including subcontractors where noted)**

In accordance with G.S. 143-128.2, in addition to all requirements listed in this DWSRF Special conditions Package, the Prime Contractor shall also follow each requirement listed in the State Special Conditions Package, particularly the following:

**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 either Affidavit A or B (as applicable) with the bid. The proposed low bidder shall submit to the Owner Affidavit C (if applicable) and any associated documentation within a time-frame to be established in the bid specifications (10 days of being notified of being the low bidder, if not otherwise specified). [G.S. 143-128.2(c)(1)]**

**The first step in documenting DBE compliance is to determine if the Contractor will further subcontract. Note: Subcontracts, including purchase orders and rental agreements, may be used to procure construction, equipment, services, or material supplies.**

Any Contractor who chooses not to further subcontract shall provide the following form to the Owner within 10 days of being informed of being the apparent low bidder:

*Certification Regarding Debarment, Suspension and Other Responsibility Matters* (Form PWS008).

A Prime Contractor who chooses not to further subcontract needs only to submit the above form and can ignore the remaining instructions.

The remaining steps apply only to Prime Contractors who further subcontract.

1. Any Prime Contractor who subcontracts shall make the six good faith efforts (see Attachment No. 2) to utilize small and minority and women's business enterprises.
2. Any Prime Contractor who subcontracts shall complete the form: *Certification Regarding Debarment, Suspension and Other Responsibility Matters* (Form PWS008).
3. A Prime Contractor who subcontracts shall list in the *DBE Subcontractor Utilization Form* (Form EPA 6100-4) each subcontract discipline (general type of work) that the Prime Contractor expects to further subcontract.
4. A Prime Contractor who subcontracts shall use the following three resources to develop a solicitation list and/or advertise the opportunity for subcontracting:
  - a) Vendor-link – a state-operated website,
  - b) Department of Commerce's MBDA Phoenix Database, and either
  - c) The Small Business Association (SBA) or
  - d) DoD's Central Contracting Registration.

For additional information, including detailed instructions on the use of each resource, see the instructions for "*Resources Used to Identify DBE Contractors*" form (Form PWS001).

5. Any Prime Contractor who subcontracts shall complete the "*Resources Used to Identify DBE Contractors*" form (Form PWS001) showing the use of the three above-listed resources to search for qualified DBE subcontractors to solicit or otherwise notify of the project. The Contractor shall provide documentation as described in the instructions for "*Resources Used to Identify DBE Contractors*" form (Form PWS001).
6. A Prime Contractor who subcontracts shall solicit at least three DBE subcontractors in each subcontract discipline (general type of work) that the Prime Contractor expects to subcontract (for example, at least the disciplines listed in the Form EPA 6100-4). If using three resources identifies fewer than three qualified DBE firms, then the Contractor shall solicit all qualified DBE firms identified.

7. Any Prime Contractor who subcontracts shall complete the "*Record of DBE Solicitation*" form (Form PWS003) showing the results of the solicitations for qualified DBE subcontractors.
  - a) The Contractor shall document each solicitation.
  - b) PWS strongly recommends that the Contractor follow up each solicitation with at least one logged phone call. PWS suggests logging the phone call as a note on the documentation of solicitation (e.g., putting a note on the FAX confirmation sheet: "Called at 10:00 on 13<sup>th</sup> April, left message").
8. A Prime Contractor who subcontracts shall provide the following to the Owner within 10 days of being informed of being the low bidder:
  - a) *Resources Used to Identify DBE Contractors* (Form PWS001) and the backup documentation listed in the instructions for Form PWS001 showing the resources used to develop a solicitation list,
  - b) *Record of DBE Solicitation Form* (Form PWS003) and the backup documentation listed in the instructions for Form PWS003 showing the results of any direct solicitation,
  - c) *DBE Subcontractor Utilization Form* (Form EPA 6100-4),
  - d) *Certification Regarding Debarment, Suspension and Other Responsibility Matters* (Form PWS008).completed by first tier subcontractors (as applicable),
  - e) *Certification Regarding Debarment, Suspension and Other Responsibility Matters* (Form PWS008) completed by the Prime Contractor,
  - f) DBE, MBE, and/or WBE certification for each proposed DBE, MBE, and/or WBE subcontractor. Registration in VendorLink as a HUB is sufficient. For more, see the definition of "DBE Certification."
  - g) *DBE Subcontractor Form* (Form EPA 6100-3)
9. A Prime Contractor who subcontracts shall provide the *DBE Subcontractor Participation Form* (Form EPA 6100-2), along with the instructions page, to all of its DBE subcontractors.

## II. Federal Attachments

**FEDERAL SPECIAL PROVISIONS**

- (a) The Capacity Development Program requirements codified in 15A NCAC 18C Section .0300 and .1304 apply. For additional information, please contact Public Water Supply at 919-715-2321 or visit <http://www.ncwater.org/pws/index.htm>
- (b) Under 40 CFR 33.302, the Prime Contractor shall pay subcontractors within 30 days of being paid by the Owner.
- (c) The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.
- (d) The Prime Contractor shall notify the Owner prior to terminating any DBE subcontractor.
- (e) Under 40 CFR 33.302(c), if a DBE subcontractor fails to complete work under the subcontract for any reason, the Prime Contractor shall employ the six good faith efforts listed in Attachment No. 2 if soliciting a replacement subcontractor.

**These special provisions shall supersede any conflicting provisions of this contract, including any conflicting provisions of the State Special Conditions Package.**

**MINORITY BUSINESS ENTERPRISE REQUIREMENTS FOR  
FEDERAL DWSRF LOAN PROJECTS**

Under 40 CFR 33.301, an Owner or Contractor, **including one exempted from applying the fair share objective requirements by 40 CFR 33.411**, is required to make the following good faith efforts **whenever procuring construction, equipment, services and supplies** under an EPA financial assistance agreement, **even if it has achieved its fair share objectives** (i.e., met the numerical goal). If the recipient has a law, ordinance, or executive order that establishes a goal for minority and/or women's businesses, the recipient may use that goal as the "fair share" objective for the project.<sup>1</sup>

The "Six Good Faith Efforts" are as follows:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process. *(i.e., provide alternative bidding scenarios)*
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

---

<sup>1</sup> Most public sector Owners in North Carolina will have a local ordinance pursuant to G.S. 143-128.2(a), which requires every local unit of government to establish a "verifiable percentage goal" for DBE participation.

## DEFINITIONS

Bidder is any party that submits a bid.

Contractor, Prime Contractor, Proposed Contractor – This DWSRF 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 DWSRF 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 and DBE Certification – Effectively, the class of DBEs (Disadvantaged Business Enterprises) is made up of WBEs (Woman Owned Business Enterprises) and MBEs (Minority Owned Business Enterprises). MBE and WBE are further defined in 40 CFR 33 Subpart B. Under 40 CFR 33.204(e), 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.

Under 40 CFR 33.202, USEPA tracks DBE participation only for firms owned by citizens of the United States of America. Therefore, EPA Form 6100-4 *DBE Subcontractor Utilization Form* requires Prime Contractors to show the citizenship status of subcontractors.

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.

**BONDS AND INSURANCE**

Bonding requirements for Contracts in excess of \$100,000 are to comply with 40 CFR 30.48(c) as follows:

1. Bids on these contracts are to be accompanied by a guarantee equivalent to five percent of the bid price or they are not to be considered for contract. 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. Signed contracts are to be accompanied by 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.
3. Payment bond equal to 100 percent of the contract price is to accompany the signed contract. 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.

Insurance requirements are contained in the General Conditions. In addition to this insurance, the Owner and the Contractor must acquire any flood insurance made available by the Federal Emergency Management Agency as required by 40 CFR 30.600 (b), if construction will take place in a flood hazard area identified by the Federal Emergency Management Agency.

**DAVIS-BACON (DB) AND RELATED ACTS PROVISIONS AND PROCEDURES**

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

**Obtaining Wage Determinations.**

- (a) Subrecipients must obtain proposed wage determinations for specific localities at [www.wdol.gov](http://www.wdol.gov). After the Subrecipient obtains its proposed wage determination, it must submit the wage determination to the State for approval prior to inserting the wage determination into any solicitation, contract, task order, work assignment or similar ordering instrument unless subsequently directed otherwise by the State.
- (b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
  - (1) While the solicitation remains open, the subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
  - (2) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (c) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar ordering instrument to an existing contractor rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.

- (d) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

29 CFR 5.5: Contract provisions and related matters.

- (a) The State shall cause or require the subrecipient(s) to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1, the following clauses:
  - (1) Minimum wages.
    - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Wage Determinations are available for this purpose from the Wage Determinations OnLine.gov at <http://www.wdol.gov/dba.aspx#0> or a successor site.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate

wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The [attached] wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

The Davis-Bacon poster (WH-1321) is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf> (English), <http://www.dol.gov/whd/regs/compliance/posters/davispan.pdf> (Spanish), or a successor site. These posters can also be found in Section IV: Davis-Bacon and Related Acts Forms.

- (ii)
- (A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State. The State will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State or will notify the State within the 30-day period that additional time is necessary.

- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the State shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (2) Withholding - The subrecipient(s) shall upon its own action or upon written request of an authorized representative of the EPA or Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) Payrolls and basic records.

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the subrecipient(s), that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient(s) shall provide written confirmation in name of agency a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired.

Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. This form can also be found in Section IV: Davis-Bacon and Related Acts Forms.

The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State, the contractor, the EPA,

or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

- (B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under 29 CFR 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
  - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
  - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

The Labor Standards Interview form (SF 1445) is available for this purpose from the General Services Administration’s Forms Library at <http://www.gsa.gov/portal/forms/download/12BF5D0E2DC4484685256CBC0062F375> or its successor site. This form can also be found in Section IV: Davis-Bacon and Related Acts Forms.

If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

- (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed

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

- (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination and debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

- (9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the subrecipient(s), the State, the EPA, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
  - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (b) Contract Work Hours and Safety Standards Act - The subrecipient(s) shall insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
  - (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

- (3) Withholding for unpaid wages and liquidated damages - The subrecipient(s), upon written request of an authorized representative of the EPA or Department of Labor shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.
- (c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the subrecipient(s) shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the subrecipient(s) shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the State, the EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

The Labor Standards Interview form (SF 1445) is available for this purpose from the General Services Administration's Forms Library at <http://www.gsa.gov/portal/forms/download/12BF5D0E2DC4484685256CBC0062F375> or its successor site. This form can also be found in Section IV: Davis-Bacon and Related Acts Forms.

### Compliance Verification

- (a) The subrecipient shall periodically interview a sufficient number of employees entitled to Davis-Bacon (DB) prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient(s) must use Standard Form (SF) 1445 or equivalent documentation to memorialize the interviews.
- (b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient(s) should conduct interviews with a

representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

- (c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient(s) should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient(s) shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The subrecipient(s) shall periodically review contractor's and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item (b) and (c) above.
- (e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

### III. DBE Forms and Checklists



## Resources Used to Identify DBE Contractors



PUBLIC WATER SUPPLY

Owner	
Project and Contract Name / Number	
Project WIF No.:	
Name of Contractor	

**Check which one applies:**

- Certification by Owner:** The Owner does hereby certify that it has made good faith efforts to meet the goals established by resolution and in the DWSRF Special Conditions Package, and that the contracts meet the requirements of the Owner's minority business participation outreach plan. **OR**
- Certification by the Prime Contractor:** The Prime Contractor does hereby certify that it has made good faith efforts to meet the goals established in the DWSRF Special Conditions Package.

\_\_\_\_\_   
 Print name of authorized representative

\_\_\_\_\_   
 Signature of authorized representative / Date

<b>Both the Owner and a Prime Contractor who subcontracts must use the following three resource to <u>advertise</u> the opportunity to bid, or to <u>identify</u> qualified DBEs to directly solicit</b>	<b>Date(s) resource utilized</b>
VendorLink ( <a href="https://www.ips.state.nc.us/ips/vendor/searchVendor.aspx">https://www.ips.state.nc.us/ips/vendor/searchVendor.aspx</a> )	
MBDA Phoenix Database (1-877-500-MBEC or 1-877-500-6232) (Note: This resource requires 7 days notice for use.)	
At least one of the following: <input type="checkbox"/> <u>Advertising Option</u> SBA's SUB-Net ( <a href="http://web.sba.gov/subnet/">http://web.sba.gov/subnet/</a> )  <b>OR</b>  <input type="checkbox"/> <u>Search Option</u> DoD's Central Contracting Registration: <a href="http://www.ccr.gov/">http://www.ccr.gov/</a> or <a href="http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm">http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm</a>	
<b>Continue to list any other resource used to <u>advertise</u> the opportunity to bid, or to <u>identify</u> qualified DBEs to directly solicit</b>	<b>Date(s) resources utilized</b>

## Instructions for "Resources Used to Identify DBE Contractors" Form PWS001

This form provides information on the resources used to identify qualified DBE firms to directly solicit to participate in the project, and on resources (aimed at a DBE audience) used to advertise the opportunities to bid.

1. Public Water Supply Section (PWS) requires both the Owner and each proposed Prime Contractor who subcontracts to complete this form. Note that, for these purposes, **(sub)contracts, including purchase orders and rental agreements, may be used to procure construction, equipment, services, or supplies.** The Prime Contractor shall provide its forms to the Owner with the bid.
2. If no resources were used, return the form marked "**Not Applicable**," and explain (for example write, "will not subcontract").
3. Add pages if needed.
4. The Owner and each Prime Contractor who subcontracts shall use and document the following three (3) resources to identify qualified DBE firms to directly solicit:
  - **VendorLink** – The Owner shall search this website for each contract type that the Owner expects to put to bid. Each Prime Contractor who subcontracts shall search this website for each subcontract discipline that the Contractor considers subcontracting {for example, at least every subcontract discipline the Contractor lists on a *DBE Subcontractor Utilization Form* (Form EPA 6100-4)}. Vendorlink is located at the following website:  
<https://www.ips.state.nc.us/ips/vendor/searchVendor.aspx>, under  
<http://www.ips.state.nc.us/ips/vendor/vndpubmain.asp>.  
 Only firms with "HUB verification = yes" status as MBEs and/or WBEs count as DBEs. Firms classified as Small Businesses without HUB verification as MBE or WBE do not count as DBEs.
 

**A firm with a HUB status of "No" in VendorLink does not count as a DBE unless it has a DBE certification by another unit of government.**
  - **Department of Commerce's MBDA Phoenix Database** – The Owner and each Prime Contractor who subcontracts shall advertise the opportunity to (sub)contract by contacting Dan Stafford at one of the following:
 

<ul style="list-style-type: none"> <li>▪ by email at <a href="mailto:dstafford@ncimed.com">dstafford@ncimed.com</a></li> <li>▪ by phone at one of the following:               <ul style="list-style-type: none"> <li>919-287-3198 - local</li> <li>919-956-8889 - local</li> <li>877-500-MBEC (6232) - toll free,</li> </ul> </li> <li>▪ by FAX at 919-688-8478, or</li> </ul>	<ul style="list-style-type: none"> <li>▪ by regular mail at               <ul style="list-style-type: none"> <li>Dan Stafford</li> <li>NC Minority Business Enterprise Center</li> <li>114 W. Parrish Street, 5th Floor</li> <li>Durham, North Carolina 27701</li> </ul> </li> </ul>
---	--
  - **The Small Business Association (SBA) or the Department of Defense (DoD)** – The Owner and each Prime Contractor who subcontracts shall **either:** 1) Advertising Option – use the SBA to advertise the opportunity to bid, **or** 2) Search Option – search SBA to identify qualified DBE firms to directly solicit. To advertise opportunities for (sub)contracting, click on the "post solicitation" button at SBA's SUB-Net website: <http://web.sba.gov/subnet/>.
    - The search functionality of Pro-Net <http://pro-net.sba.gov/> has been absorbed by the Dynamic Small Business Search of the DoD's Central Contracting Registration (CCR) {<http://www.ccr.gov/>}. You will find the familiar Pro-Net search at a new location: [http://dsbs.sba.gov/dsbs/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm) The Owner exercising the Search Option shall use this website to search for DBE firms qualified to perform each contract type that the Owner expects to put to bid.
    - Each Prime Contractor who subcontracts and who exercises the Search Option shall use this website to search for each subcontract discipline that the Contractor considers subcontracting {for example, at least every subcontract discipline the Contractor lists on a *DBE Subcontractor Utilization Form* (Form EPA 6100-4)}.

- Only firms with "DBE Certification" (see definitions) count as DBEs. Small businesses that are not disadvantaged do not count toward the three required solicitations.
5. PWS also encourages the Owner or Prime Contractor to use other resources identified on the PWS Loans and Grants DBE Resources Webpage:  
<http://www.ncwater.org/pws/srf/DBE/DBE-Resources.htm>. Include documentation of resource utilization (e.g., printouts of web-based directories).

In particular, PWS encourages each Prime Contractor who subcontracts to use the NCDOT directory, which is especially productive.

6. "Use of a recognized resource" is defined as follows:
- For a resource that allows advertising an opportunity for (sub)contracting, "Use of a recognized resource" means documenting the posting of an advertisement meeting all the elements laid out below: [adapted from G.S. 143-128.2 (e)(3) a through e]
    - A description of the work for which the bid is being solicited.
    - The date, time, and location where bids are to be submitted.
    - The name of the individual within the contracting body who will be available to answer questions about the project.
    - Where bid documents may be reviewed.
    - Any special requirements that may exist.
  - For a resource that allows the user to search for firms doing different types of work, "Use of a recognized resource" means documenting the search for each subcontract discipline that the Contractor considers subcontracting {for example, at least every contract discipline the Contractor lists on a *DBE Subcontractor Utilization Form* (EPA Form 6100-4)}.
7. Each advertisement of an opportunity to (sub)contract posted to a recognized resource shall count as one solicitation in each subcontract discipline listed in the solicitation.
8. The Owner and each Prime Contractor who subcontracts shall provide documentation of the use of the resources as follows:
- **The Small Business Association (SBA) or the Department of Defense (DoD)**
    - Provide the printout of the solicitation from the SBA's SUB-Net website, and/or
    - Owner - Attach the printouts of the search results of the DoD's CCR for each project type that the Owner expects to bid.
    - Prime Contractor - Attach the printouts of the search results of the DoD's CCR for each subcontract discipline that the Contractor considers subcontracting (for example, at least every subcontract discipline the Contractor lists on a DBE Subcontractor Utilization Form (EPA 6100-4) form).
  - **Department of Commerce's MBDA Phoenix Database (Requires 7 days notice.)**
    - Show the confirmation email from Dan Stafford or a copy of the solicitation posted on the MBDA website. The solicitation must mention each subcontract discipline that the Contractor considers subcontracting {for example, at least every contract discipline that the Contractor lists on a *DBE Subcontractor Utilization Form* (EPA Form 6100-4)}.
  - **VendorLink -**
    - Owner - Attach the printouts of the search results of **VendorLink** for each contract type that the Owner expects to bid.
    - Prime Contractor - Attach the printouts of the search results of **VendorLink** for each subcontract discipline that the Contractor considers subcontracting {for example, at least every contract discipline that the Contractor lists on a *DBE Subcontractor Utilization Form* (EPA Form 6100-4)}.
  - **Other Resources** - Provide written documentation of the use of any other resources:
    - Show the affidavit of publication for any advertisement in a newspaper.
    - Show the search results for searches of other databases.
    - Print out the online advertisement for on-line postings.



# Record of DBE Solicitation



Both the Owner and each Prime Contractor shall complete this form.

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

Project and Contract Name / Number: \_\_\_\_\_

Total Contract Amount: \$ \_\_\_\_\_

(Sub)contract Discipline, Product or Service: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Firm: _____		Ownership? <input type="checkbox"/> MBE <input type="checkbox"/> WBE	Complete this section only for (sub)contractors that will be used.  (Sub)contract Amount: \$ _____ % of total Contract: _____ % Expected Start date: _____ Expected End date: _____
Address: _____		Responded? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Phone: _____		To be used? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Firm: _____		Ownership? <input type="checkbox"/> MBE <input type="checkbox"/> WBE	Complete this section only for (sub)contractors that will be used.  (Sub)contract Amount: \$ _____ % of total Contract: _____ % Expected Start date: _____ Expected End date: _____
Address: _____		Responded? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Phone: _____		To be used? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Firm: _____		Ownership? <input type="checkbox"/> MBE <input type="checkbox"/> WBE	Complete this section only for (sub)contractors that will be used.  (Sub)contract Amount: \$ _____ % of total Contract: _____ % Expected Start date: _____ Expected End date: _____
Address: _____		Responded? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Phone: _____		To be used? <input type="checkbox"/> Yes <input type="checkbox"/> No	

Firm: _____		Ownership? <input type="checkbox"/> MBE <input type="checkbox"/> WBE	Complete this section only for (sub)contractors that will be used.  (Sub)contract Amount: \$ _____ % of total Contract: _____ % Expected Start date: _____ Expected End date: _____
Address: _____		Responded? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Phone: _____		To be used? <input type="checkbox"/> Yes <input type="checkbox"/> No	

\_\_\_\_\_  
Print Name and Title of Authorized Person

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Date

## Instructions for "Record of DBE Solicitations" Form PWS003

This form provides information about each DBE (sub)contractor notified of project.

1. Both the Owner and each proposed Prime Contractor who subcontracts shall complete this form. Note that, for these purposes, **(sub)contracts, including purchase orders and rental agreements, may be used to procure construction, equipment, services, or supplies.** The Prime Contractor shall provide this form to the Owner within 10 days of being informed of being the low bidder upon request or if the "verifiable percentage goal" of DBE participation is not met. The Owner shall submit this form, as applicable, to Public Water Supply Section (PWS) within 14 days of notification.
2. Use a separate page for every subcontract discipline or type of contract for which you solicited bids. Add pages as needed. Sign each page.
3. If no solicitations were made, return the form marked "Not Applicable," and explain (e.g., write "will not subcontract").
4. The Owner shall use three resources (identified on PWS001) to find qualified DBE firms to directly solicit to bid on the prime contract. The Owner shall directly solicit no less than three qualified DBEs to bid on the prime contract, unless the documented search of three resources identified fewer than three qualified DBE firms – in which case the Owner shall directly solicit all identified qualified DBE firms in that expected contract type.
5. See the definition of DBE.

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

6. Each Prime Contractor shall use three resources (identified on PWS001) to find qualified DBE firms to directly solicit to bid in each expected subcontract discipline {for example, at least every contract discipline the Contractor lists on a *DBE Subcontractor Utilization Form* (EPA Form 6100-4)}. Each Prime Contractor shall directly solicit **no less than three qualified DBEs** to bid in each expected subcontract area, unless the documented search of three resources identifies fewer than three qualified DBE firms in an expected subcontract discipline – in which case the Prime Contractor shall directly solicit all identified qualified DBE firms in that expected subcontract discipline.

PWS strongly recommends that the Prime Contractor solicit at least four DBEs in each subcontract discipline.

7. Each advertisement of an opportunity to (sub)contract posted to a recognized resource counts as one solicitation in each subcontract discipline listed in the solicitation.
8. Attach proof of each claimed solicitation. Such proof is generally a copy of the solicitation itself and can include the following:
  - FAX confirmation sheets – the preferred method,
  - copies of emails, or
  - certified letters (including return receipt).
9. PWS strongly encourages that the Owner or Prime Contractor follow up each solicitation with at least one logged phone call. PWS suggests logging the phone call as a note on the documentation of solicitation (e.g., putting a note on the FAX confirmation sheet: "Called at 10:00 on 13th April, left message").



# EPA Form 6100-4 Subcontractor Utilization Form

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



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

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 "***Subcontractor Utilization Form***" EPA Form 6100-4

### 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.
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.



# Certification Regarding Debarment, Suspension and Other Responsibility Matters



PUBLIC WATER SUPPLY

Project Owner \_\_\_\_\_ WIF No. \_\_\_\_\_  
 Prime Contractor \_\_\_\_\_  
 Project and Contract Name / \_\_\_\_\_  
 Number \_\_\_\_\_

Instructions

Within nine days of bid opening, each subcontractor shall complete this form and submit it to the Prime Contractor, **in duplicate**. Note that, for these purposes, **(sub)contractors include any persons or organizations through which construction, equipment, services, or supplies are procured**. Within ten days of bid opening, each Prime Contractor shall complete this form and submit it (and its subcontractors' forms) to the Owner, **in duplicate**.

- The prospective contractor 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, or 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 antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records making false statements, or receiving stolen property;
  - c. Are not presently indicted 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 b of this certification; and
  - d. Have not within a three years 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 5 years or both.

- I am unable to certify to the above statements. My explanation is attached.


Name of (Sub)Contractor: \_\_\_\_\_

\_\_\_\_\_  
 Print Name and Title of Authorized Representative of (Sub)Contractor

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

\_\_\_\_\_  
 Date

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

	Environmental Protection Agency	<b>Disadvantaged Business Enterprise Program                  DBE Subcontractor Participation Form                  Form 6100-2</b>
---	---------------------------------	---

<b>Name of Subcontractor<sup>1</sup></b>		<b>Project Name</b>
<b>Address</b>		<b>Contract No. (WIF No.)</b>
<b>Telephone No.</b>		<b>Email Address</b>
<b>Prime Contractor Name:</b>		

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

---



---



---



---



---

<b>Contract Item No.</b>	<b>Item of work or description of services received from the Prime Contractor</b>	<b>Amount Subcontractor was paid by Prime Contractor</b>
_____ <b>Subcontractor Signature</b>		_____ <b>Title / Date</b>

<sup>1</sup> Subcontractor 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.



## **Instructions for “*DBE Subcontractor Participation Form*” EPA Form 6100-2**

Under 40 CFR 33.302(e), the Prime Contractor will provide EPA Form 6100–2 *DBE Subcontractor Participation Form*, along with this instruction page, to all of its DBE subcontractors.

EPA Form 6100–2 gives a DBE subcontractor the chance to describe the work the DBE subcontractor received from the Prime Contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have (for example reasons why the DBE subcontractor believes it was terminated by the Prime Contractor).

DBE subcontractors may send completed copies of EPA Form 6100–2 directly to the EPA Region IV DBE Coordinator:

Mr. Charles Hayes  
USEPA, Region 4 DBE Coordinator  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-6960

hayes,charles@epa.gov  
404-562-8733

## **Instructions for “*DBE Subcontractor Performance Form*” EPA Form 6100-3**

Under 40 CFR 33.302 (f) the Prime Contractor will provide EPA Form 6100–3 *DBE Subcontractor Performance Form*, along with this instruction page, to all of its DBE subcontractors.

EPA Form 6100-3 gives the DBE subcontractor the chance to report the scope and cost of the subcontract it received, providing a check for the information that the Prime Contractor put in EPA Form 6100-4.

The proposed DBE subcontractor shall complete EPA Form 6100–3 *DBE Subcontractor Performance Form*, and forward it to the Prime Contractor along with the subcontractor's quote. The Prime Contractor will provide all completed 6100-3 forms to the Owner within 10 days of being informed of being the low bidder.

Note: Subcontractors include any persons or organizations through which the Prime Contractor procures construction, equipment, services, or material supplies.



## DWSRF SCP Checklist for Contractors & Subs



PUBLIC WATER SUPPLY

1. A Prime Contractor who elects not to subcontract must submit the following form to the Owner:
    - a.  *Certification Regarding Debarment, Suspension and other Responsibility Matters* (Form PWS008).
  
  2. A Prime Contractor who elects to subcontract must submit the following documentation to the Owner.
    - a.  The *Certification Regarding Debarment, Suspension and Other Responsibility Matters* (Form PWS-008) for each first-tier subcontractor, whether DBE or not.
    - b.  Its own *Certification Regarding Debarment, Suspension and other Responsibility Matters* (Form PWS008).
    - c.  *Subcontractor Utilization Form* (EPA 6100-4) showing all proposed subcontract disciplines (not just those disciplines where a DBE subcontractor is proposed).
    - d.  *Resources used to Identify DBE Contractors* (Form PWS001). The Contractor must document the use of the three required resources listed on form PWS001. The acceptable documentation is discussed in the instructions for form PWS001.
    - e.  *Record of DBE Solicitation* (Form PWS003).
      - i.  The Contractor shall list on form PWS003 at least three DBE solicitations in each subcontract discipline. Use a separate PWS003 for each subcontract discipline.
- Only solicitations to firms with "DBE Certification" count toward this requirement. See the definition of "**DBE Certification**." A firm with a HUB status of "No" in VendorLink does not count toward the requirement to solicit three DBEs unless it has a DBE certification by another unit of government.
- ii.  The Contractor must document each solicitation claimed on form PWS003.
        1. The preferred documentation is the FAX confirmation sheet. The acceptable documentation is discussed in the instructions for form PWS003.
        2. If a Subcontractor does not respond to a FAXED solicitation, PWS strongly recommends that a the contractor document a follow up phone call by writing a note on the FAX confirmation sheet.
      - iii.  "DBE Certifications" for any first tier DBE subcontractors proposed for use on the project in form PWS003. See the definitions of "**DBE Certification**" and "**first tier**."
    - f.  *Subcontractor Performance Form* (EPA Form 6100-3). The Contractor must provide each subcontractor with this form and submit each subcontractor's form to the Owner.
  
  3. A subcontractor must submit the following form to the EPA:
    - a.  *Subcontractor Participation Form* (EPA Form 6100-2). The Contractor must provide each subcontractor with this form.

Additional requirements (for example, any requirements under any applicable State Special Conditions Package) may also apply.



## DWSRF SCP Checklist for Owners



PUBLIC WATER SUPPLY

1. Materials to demonstrate the Owner's compliance with State Requirements (see checklists with State OCP and SCP).
2.  All required forms and documentation submitted by the Prime Contractor and any First Tier Subcontractors (see *DWSRF SCP checklist for Contractors & Subs*).
3. Materials to demonstrate compliance with Federal Requirements:
  - a.  Certified bid tabulations (or a copy of the tentative low bid) showing the proposed contract amount(s),
  - b.  *Resources used to Identify DBE Contractors* (PWS001). The Owner must document each use of a resource claimed on form PWS001. The acceptable documentation is discussed in the instructions for form PWS001.
  - c.  *Record of DBE Solicitation* (PWS003):
    - i.  The Owner shall list on form PWS003 at least three DBE solicitations for each type of contract the Owner is bidding out. Use a separate PWS003 for each type of contract. Only solicitations to firms with "DBE Certification" (see definition) count toward this requirement. Firms that are classified as small businesses, but that are not an MBE, DBE or WBE do not count toward this requirement.

**A firm with a HUB status of "No" in VendorLink does not count as a DBE or contribute toward the required three DBE solicitations unless it has a DBE certification by another unit of government.**

- ii.  The Owner must document each solicitation to a DBE firm claimed on form PWS003.
        1. The preferred documentation is the FAX confirmation sheet. The instructions for form PWS003 discuss the acceptable documentation.
        2. If a DBE Contractor does not respond to a FAXED solicitation, PWS strongly prefers that a follow up phone call be documented on the FAX confirmation sheet.
      - iii.  "DBE Certifications" for any DBE Prime Contractors proposed for use on the project in form PWS003. See the definition of "**DBE Certification**."
    - d.  The DBE documentation and forms submitted by the proposed contractor (including subcontractors).

Note that the Owner is not a passive conduit of the Contractor's DBE information. 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.<sup>1</sup>

4. The Owner must submit all the required DBE information for the Prime Contractor and any first-tier subcontractors to PWS at one of the following addresses along with certified bid tabulations, the apparent low bid, and materials to demonstrate the Owner's compliance with State Requirements.

<sup>1</sup> See G.S. 143-128.2(b) and the *Owner's Checklist and Affidavit of the Good Faith Efforts* Form PWS010 from the Owner's Compliance Package for more on the Owner's responsibility to review the Prime Contractor's DBE submittal.



## *DWSRF SCP Checklist for Owners*



PUBLIC WATER SUPPLY

**Regular 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

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

## IV. Davis-Bacon and Related Acts Forms

# EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

## FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

### PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

### OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

### ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

### APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

### PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

**1-866-4-USWAGE**  
(1-866-487-9243) TTY: 1-877-889-5627



**WWW.WAGEHOUR.DOL.GOV**

# DERECHOS DEL EMPLEADO BAJO LA LEY DAVIS-BACON

## PARA OBREROS Y MECÁNICOS EMPLEADOS EN PROYECTOS DE CONSTRUCCIÓN FEDERAL O CON ASISTENCIA FEDERAL

LA SECCIÓN DE HORAS Y SUELDOS DEL DEPARTAMENTO DE TRABAJO DE EEUU

### SALARIOS PREVALECIENTES

No se le puede pagar menos de la tasa de pago indicada en la Decisión de Salarios Davis-Bacon fijada con este Aviso para el trabajo que Ud. desempeña.

### SOBRETIEMPO

Se le ha de pagar no menos de tiempo y medio de su tasa básica de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.

### CUMPLIMIENTO

Se pueden retener pagos por contratos para asegurarse que los obreros reciban los salarios y el pago de sobretiempo debidos, y se podría aplicar daños y perjuicios si no se cumple con las exigencias del pago de sobretiempo. Las cláusulas contractuales de Davis-Bacon permiten la terminación y exclusión de contratistas para efectuar futuros contratos federales hasta tres años. El contratista que falsifique los registros certificados de las nóminas de pago o induzca devoluciones de salarios puede ser sujeto a procesamiento civil o criminal, multas y/o encarcelamiento.

### APRENDICES

Las tasas de aprendices sólo se aplican a aprendices correctamente inscritos bajo programas federales o estatales aprobados.

### PAGO APROPIADO

Si Ud. no recibe el pago apropiado, o precisa de información adicional sobre los salarios aplicables, póngase en contacto con el Contratista Oficial que aparece abajo:

o póngase en contacto con la Sección de Horas y Sueldos del Departamento de Trabajo de EEUU.



Para obtener información adicional:

**1-866-4-USWAGE**

(1-866-487-9243) TTY: 1-877-889-5627



**WWW.WAGEHOUR.DOL.GOV**

## **Instructions for "*Employee Rights under the Davis-Bacon Act*" DOL Form WH-1321 (English and Spanish)**

### Instructions:

1. The Owner shall designate a Contracting Officer to whom complaints regarding (sub)contractor employee compensation may be referred. This officer shall not be a representative of any of the (sub)contractors working on the construction project. Fill in the Contracting Officer's contact information.
2. Post form WH-1321 and 1321 SPA in a conspicuous place where all (sub)contractor employees visiting the construction site may see it.
3. Protect these forms from the weather.

**PAYROLL**

(For Contractor's Optional Use; See Instructions at [www.dol.gov/esa/whd/forms/wh347instr.htm](http://www.dol.gov/esa/whd/forms/wh347instr.htm))



Rev. Dec. 2008

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

OMB No.: 1215-0149  
 Expires: 12/31/2011

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>				ADDRESS					OMB No.: 1215-0149 Expires: 12/31/2011										
PAYROLL NO.		FOR WEEK ENDING			PROJECT AND LOCATION				PROJECT OR CONTRACT NO.										
(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
				S											FICA	WITH- HOLDING TAX		OTHER	
			O																
			S																
			O																
			S																
			O																
			S																
			O																
			S																
			O																
			S																
			O																
			S																

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

**Public Burden Statement**

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Date \_\_\_\_\_

I, \_\_\_\_\_  
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the  
(Contractor or Subcontractor)

\_\_\_\_\_ ; that during the payroll period commencing on the  
(Building or Work)

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
all persons employed on said project have been paid the full weekly wages earned, that no rebates have  
been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ from the full  
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly  
from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part  
3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948,  
63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are  
correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the  
applicable wage rates contained in any wage determination incorporated into the contract; that the  
classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide  
apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of  
Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a  
State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

— in addition to the basic hourly wage rates paid to each laborer or mechanic listed in  
the above referenced payroll, payments of fringe benefits as listed in the contract  
have been or will be made to appropriate programs for the benefit of such  
employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

— Each laborer or mechanic listed in the above referenced payroll has been paid,  
as indicated on the payroll, an amount not less than the sum of the applicable  
basic hourly wage rate plus the amount of the required fringe benefits as listed  
in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR  
SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE  
31 OF THE UNITED STATES CODE.

## Instructions for "*Payroll*" DOL Form WH-347

### Instructions:

1. The Prime Contractor and each subcontractor shall submit weekly payroll records to the Owner concerning their work on the construction project. These records shall utilize WH-347 or an equivalent form.
2. Payroll records shall cover the time from the beginning of the (sub)contractor's work on the construction project to completion of their work. These records shall be submitted to the Owner even when work has temporarily come to a halt.
3. For each employee working on the construction project, enter the hours worked on the project and the corresponding wage information.
4. A representative of the (sub)contractor shall complete and sign the certification of compliance with the terms of Davis-Bacon and related Acts.

## LABOR STANDARDS INTERVIEW

CONTRACT NUMBER			EMPLOYEE INFORMATION		
			LAST NAME		FIRST NAME
NAME OF PRIME CONTRACTOR			STREET ADDRESS		
NAME OF EMPLOYER			CITY		STATE
SUPERVISOR'S NAME					ZIP CODE
LAST NAME	FIRST NAME	MI	WORK CLASSIFICATION		WAGE RATE

ACTION	CHECK BELOW	
	YES	NO
Do you work over 8 hours per day?		
Do you work over 40 hours per week?		
Are you paid at least time and a half for overtime hours?		
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?		
WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?		

HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?	TOOLS YOU USE	
	DATE OF LAST WORK DAY BEFORE INTERVIEW (YYMMDD)	
	DATE YOU BEGAN WORK ON THIS PROJECT (YYMMDD)	

THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE

EMPLOYEE'S SIGNATURE			DATE (YYMMDD)
INTERVIEWER	SIGNATURE	TYPED OR PRINTED NAME	DATE (YYMMDD)

### INTERVIEWER'S COMMENTS

WORK EMPLOYEE WAS DOING WHEN INTERVIEWED	ACTION <i>(If explanation is needed, use comments section)</i>	YES	NO
	IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?		
	ARE WAGE RATES AND POSTERS DISPLAYED?		

### FOR USE BY PAYROLL CHECKER

IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?

YES       NO

COMMENTS

CHECKER			
LAST NAME	FIRST NAME	MI	JOB TITLE
SIGNATURE			DATE (YYMMDD)

## Instructions for "*Labor Standards Interview*" GSA Form SF-1445

### Instructions:

1. The Owner shall designate one or more Contracting Officers that will conduct interviews of (sub)contractor employees (e.g. mechanics and laborers) at the construction site concerning work hours and compensation. This officer shall not be a representative of any of the (sub)contractors working on the construction project. These interviews shall utilize form SF-1445.
2. Interviews shall be conducted with employees of each (sub)contractor and of each classification (e.g. electrician, plumber, equipment operator, laborer, etc.).
3. If a (sub)contractor works at the job site over a period of more than one month, there shall be both an employee entrance and an exit interview (which need not be for the same individual(s)).
4. Both the employee and the interviewing Contracting Officer shall certify with signature that the recorded information is correct.
5. The Owner shall designate a Checker, separate from the individual who conducted the interview, to check the recorded information against the submitted weekly payroll records to ensure that the employee is justly compensated according to the hours worked and the wage rate determinations entered into the construction contract. This officer shall not be a representative of any of the (sub)contractors working on the construction project. Any discrepancies that cannot be rectified through further documentation or by adjustment in compensation shall be reported to the U.S. Department of Labor at 1-866-487-9243 and to the Public Water Supply section of NCDENR.