

**TWDB-0210
Guidance For**

**U.S. Environmental Protection Agency
Disadvantaged Business Enterprise Program**

**Texas Water Development Board
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About the Disadvantaged Business Enterprise Program

It is the intent of the TWDB to ensure that applicants and contractors are provided with information and guidance to successfully meet the EPA's DBE program requirements. This guide covers the review process, descriptions and instructions for each form, elaboration on the "Six Affirmative Steps" and "Good Faith Efforts".

The Texas Water Development Board's (TWDB) Clean Water and Drinking Water State Revolving Fund (SRF) programs receive federal funds from the U. S. Environmental Protection Agency (EPA). These federal funds are matched by the State of Texas and are used to provide low-interest rate loans to finance wastewater and drinking water capital projects. As a condition of federal grant awards, EPA regulations require that loan recipients (municipalities, towns, public water authorities, etc.) and sub-recipients (prime contractors and sub-contractors) make a "**Good Faith Effort**" to award a fair share of work to contractors who are certified as Minority Business Enterprises (MBE's), and Women-owned Business Enterprises (WBE's) whenever procuring **construction, supplies, services and equipment**.

The DBE Program is an outreach, education, and goal oriented program designed to increase the participation of DBE's in procurements funded by EPA assistance agreements. In addition, EPA regulations require evidence showing that loan recipients performed the "Six Affirmative Steps" during procurement situations.

The TWDB's current negotiated fair share goals are:

| <u>CATEGORY</u> | <u>MBE</u> | <u>WBE</u> |
|-----------------|------------|------------|
| Construction | 12.94% | 8.72% |
| Equipment | 7.12% | 5.39% |
| Supplies | 9.68% | 9.34% |
| Services | 10.84% | 5.72% |

The TWDB does not require that recipients meet the fair share objectives, however the EPA may take remedial action under 40 CFR § 33.105 for failure to comply with the good faith efforts requirements as detailed on page 9.

Since all construction, supplies, services, and equipment procurements require compliance with DBE, it is important that all forms are completed accurate and timely to prevent withholding of payments or project delays.

When are DBE forms required?

Entities receiving federal financial assistance through the SRF Programs will be required to submit DBE documentation at different phases during the project's lifecycle (Project Application, Commitment and Closing, Planning/Design, and Construction Contract Phases).

| Project Application Phase | Form | Responsibility |
|---------------------------|-----------|------------------|
| | TWDB-0215 | Applicant/Entity |

Applicants requesting federal financial assistance through the SRF funds must include a TWDB-0215 form with the loan application.

| Commitment and Closing Phase | Form | Responsibility |
|------------------------------|-----------|-------------------------------------------------|
| | TWDB-0216 | Applicant/Entity |
| | TWDB-0217 | Prime Engineer, Financial Advisor, Bond Counsel |
| | TWDB-0373 | Applicant/Entity |

After loan commitment, but prior to closing, applicants must provide forms TWDB-0216 and TWDB-0373 forms. The project's Prime Engineer, Financial Advisor, and Bond Counsel must complete a TWDB-0217 form and indicate if any subcontracting opportunities will be available or if the contractor will be self-performing the contract. Regardless of the procurement's outcome, all entities must submit a TWDB-0373 and list the contractors selected by the applicant for the project. Failure to comply or include a contractor and/or contract will result in denial of payment.

| Planning/Design Phase | Form | Responsibility |
|-----------------------|-----------|----------------|
| | TWDB-0216 | Prime Engineer |
| | TWDB-0373 | Prime Engineer |

Some projects require additional procurement during the planning phase for geotechnical and materials testing, pilot testing, surveying, archeological surveys, etc. Projects requiring additional procurements will require a TWDB-0216 and TWDB-0373 form be completed by the Prime Engineer.

| Construction Contract Phase | Form | Responsibility |
|-----------------------------|-----------|-------------------------------|
| | TWDB-0216 | Applicant/Entity |
| | TWDB-0217 | Prime Construction Contractor |
| | TWDB-0373 | Applicant/Entity |
| | TWDB-0216 | Prime Construction Contractor |
| | TWDB-0373 | Prime Construction Contractor |

For each Construction Contract, applicants are required to submit a TWDB-0216 and TWDB-0373 for the procurement of the project's Prime Contractor. If the Prime Contractor is utilizing subcontractors for the project, then additional TWDB-0216 and TWDB-0373 forms must be submitted prior to requesting payment.

What is the significance of the TWDB-0215?

This form establishes the Applicant/Entity's understanding of federal guidelines and certifies their willingness to comply with EPA's "Good Faith Effort" policy in all project procurements paid for with federal loan proceeds. Section III describes the maximum potential Minority Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) procurement participation opportunities using the EPA negotiated goals.

How to Complete a TWDB-0215

Step 1: If known, enter the 5-digit project number assigned by the TWDB for the project in Section I, Box A.

Step 2: Enter the name of the applicant/entity in Section I, Box B.

Step 3: Enter the total TWDB funding request amount in Section I, Box C.

Step 4: Select the type of loan requested (DWSRF or CWSRF) in Section I, Box D.

Step 5: Read Section II regarding the six required "Good Faith Efforts."

Step 6: Provide signature, title, and certification date in Section II.

Step 7: Enter the anticipated amounts of construction, equipment, supplies, and services in the left column of Section III. When entered, the potential MBE and WBE participation amounts will automatically be calculated according to the current fair share goals.

What is the significance of the TWDB-0216?

This form identifies who was solicited and how the solicitation was conducted. This form is required for applicants who procure Bond Counsel, Financial Advisor, and Prime Engineering professional services and intend to fund those services with federal loan proceeds.

How to Complete a TWDB-0216

Step 1: If known, enter the 5-digit project number assigned by the TWDB for the project in Section I, Box A.

Step 2: Enter the name of the applicant/entity in Section I, Box B.

Step 3: Enter the total TWDB funding request amount in Section I, Box C.

Step 4: Select the type of loan requested (DWSRF or CWSRF) in Section I, Box D.

Step 5: Provide the project's name.

Step 6: Indicate who is soliciting the project (Applicant/Entity or Prime Contractor).

Step 7: Select the project phase for which procurement is sought (Application, Planning/Design, or Construction). If the project is the Construction Contract phase, please indicate the contract number.

Step 8: Provide the business name, point of contact, addresses, telephone number, and e-mail for each business solicited for procurement in Section II, Columns 1-4. Entities must solicit to a minimum of 3 businesses/firms for each type of contract sought (i.e. three engineering, financial advisor, and bond counsel firms) to demonstrate a Good Faith Effort.

Step 9: Provide the category of procurement (construction, equipment, supplies, and services) in Section II, Column 5.

Step 10: Indicate whether the firm is a Minority Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), or Other (non-MBE/WBE firms) in Section II, Column 6.

Step 11: Indicate the combination of solicitation methods utilized for procurement in Section II, Column 7. To achieve a "Good Faith Effort" a minimum of two methods must be utilized for solicitation, however additional methods are encouraged by the TWDB should any of the attempted methods fail to meet DBE program requirements.

Step 12: Attach a copy of the advertisement, RFQ packet, bid tabulation, fax/emails, pre-bid meeting sign-in sheet, or any other backup solicitation documentation (required).

Step 13: Provide signature, title, and certification date at the end of Section II.

Important Note! To meet DBE requirements, applicants and contractors must demonstrate "Good Faith Efforts" in maximizing the potential for contracting and subcontracting opportunities. For tips on meeting "Good Faith Efforts" requirements please see page 9.

What is the significance of the TWDB-0217?

This form establishes each prime contractor's understanding of federal guidelines and certifies their willingness to comply with EPA's "Good Faith Effort" policy in all project procurements paid for with federal loan proceeds. Section III describes the maximum potential MBE/WBE subcontracting opportunities using the pre-established goals. Prior to closing, a TWDB-0217 from each prime contractor (i.e. Prime Engineer, Financial Advisor, Bond Counsel, Prime Contractor, etc.) must be submitted for review and approval and may be included with the financial assistance application if procurement has already occurred.

How to Complete a TWDB-0217

Step 1: If known, enter the 5-digit project number assigned by the TWDB for the project in Section I, Box A.

Step 2: Enter the name of the applicant/entity in Section I, Box B.

Step 3: Enter the total TWDB funding request amount in Section I, Box C.

Step 4: Select the type of loan requested (DWSRF or CWSRF) in Section I, Box D.

Step 5: Please enter the name of the prime contractor.

Step 6: If the project is the Construction Contract phase, please indicate the contract number.

Step 7: Provide the dollar amount for each prime contract.

Step 8: Read Section II regarding the six required "Good Faith Efforts."

If there are no available subcontracting opportunities, the prime contract shall certify they will fulfill 100 percent of the contract requirements with their own employees and resources in the designated exception box.

Step 9: Enter the anticipated amounts of construction, equipment, supplies, and services applicable to the contract in the left column of Section III. When entered, the potential MBE and WBE participation amounts will automatically be calculated according to the current fair share goals.

Step 10: Provide signature, title, and certification date in Section II.

What is the significance of the TWDB-0373?

This form describes all contracts actually awarded by the Applicant/Entity and/or Prime Contractor. The TWDB-0373 form should also include a copy of the contractor's official DBE certification to confirm Minority and Women-Owned Business Enterprises status.

How to Complete a TWDB-0373

Step 1: If known, enter the 5-digit project number assigned by the TWDB for the project in Section I, Box A.

Step 2: Enter the name of the applicant/entity in Section I, Box B.

Step 3: Enter the total TWDB funding request amount in Section I, Box C.

Step 4: Select the type of loan requested (DWSRF or CWSRF) in Section I, Box D.

Step 5: Provide the project's name.

Step 6: Indicate who is soliciting the project (Applicant/Entity or Prime Contractor).

Step 7: Select the project phase for which procurement is sought (Loan Commitment/Closing, Planning/Design, or Construction). If the project is the Construction Contract phase, please indicate the contract number.

Step 8: Provide the name and address of each contractor in Section II, Column 1.

Step 9: Provide the category of procurement (construction, equipment, supplies, and services) in Section II, Column 2.

Step 10: Indicate whether the firm is a Minority Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), or Other (non-MBE/WBE firms) in Section II, Column 3.

Step 11: List the actual contracted amount for each contract in Section II, Column 4.

Step 12: List the actual contract execution date for each contract in Section II, Column 5.

Step 13: Provide indicate (Y/N) if the MBE/WBE certification is attached in Section II, Column 6 and attach a copy of a valid certification if the contractor has DBE certification issued by: the City of Austin, City of Houston, Texas Department of Transportation, Texas Comptroller of Public Accounts (HUB), Southwest Minority Supplier Development Council, North Central Texas Regional Certification Agency, DFW Minority Business Council or Women's Business Council.

Step 14: Provide signature, title, and certification date in Section II.

Important Note! Please ensure that all contractors to be paid with federal SRF funding are included on the form. Failure to do so will result in denial of payment.

What is a “Good Faith Effort”?

The “Good Faith Effort” activities by a recipient and its prime contractor to increase DBE awareness of procurement opportunities through race/gender neutral efforts. Race/gender neutral efforts are ones which increase awareness of contracting opportunities in general, including outreach, recruitment and technical assistance.

According to 40 CFR § 33.301, a recipient is required to make the following “Good Faith Efforts” whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement:

(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.

(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.

Important Note! To achieve a “Good Faith Effort” the entity or prime contractor must utilize a combination of two methods to solicit services, supplies, equipment, and construction for the project. Applicants and contractors are encouraged to search databases provided by the Small Business Administration (http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm), Texas Department of Transportation (<http://www.dot.state.tx.us/business/tucp/tucp-cat.htm>), City of Austin (<http://www.ci.austin.tx.us/smbr/vendors/CertVendor.cfm>), City of Houston (<https://houston.mwdb.com/FrontEnd/VendorSearchPublic.asp>), and Texas Comptroller of Public Accounts (<http://www.cpa.state.tx.us/procurement/cmb/cmbhub.html>) to enhance MBE/WBE contractor participation.

Example National Institute of Government Purchasing (NIGP) Commodity Codes

NIGP Class-Item Codes contain 5-digits. To obtain the five digit code, combine the three digit class code with its corresponding two digit item number

How to Search the Centralized Masters Bidders List and Historically Underutilized Business Directory

Step 1: Click on this link: <http://www.cpa.state.tx.us/procurement/cmb/cmbhub.html>

Step 2: Select the type of business search: CMBL only, HUBs on CMBL, HUBs not on CMBL, HUB mentor protégé, or all vendors.

Step 3: Enter the respective commodity class, item and district codes (please see next page for related water and wastewater commodities) and hit Search.

Step 4: On the following page, select the information you would like to obtain from the database, including: contact information, address, business description, gender, ethnicity, and website.

Step 5: Search Results will appear with the requested information.

Step 6: Click on the Vendor ID or business name to pull up detailed vendor information to confirm HUB status (A = Active, N = Not HUB), contact information, and registered commodities.

Step 7: Gather physical or email contact information from the search results list and distribute the project solicitation.

Example NIGP Commodity Codes

| Class | Item(s) | Description |
|--------------------------------------------------------------------------|---------|------------------------------------------------------------------------------------------------|
| 890 (Water Supply, Groundwater, Sewage Treatment, and Related Equipment) | 01 - 95 | Equipment (various) |
| 907 (Architectural and Engineering Services – Non-Professional) | 42 | Geotechnical – Soils |
| 907 (Architectural and Engineering Services – Non-Professional) | 75 | Site Assessment and Site Field Observation |
| 907 (Architectural and Engineering Services – Non-Professional) | 83 | Testing Services |
| 912 (Construction Services, General) | 16 | Boring, Drilling, Testing, Soundings |
| 912 (Construction Services, General) | 23 | Construction, General (Backfill Services, Digging, Ditching, Road Grading, Rock Stabilization) |
| 912 (Construction Services, General) | 40 | Demolition Services |
| 912 (Construction Services, General) | 44 | Excavation Services |
| 912 (Construction Services, General) | 75 | Quality Control Testing Services |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 39 | Construction, Pipe Culvert |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 40 | Construction, Pipeline |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 45 | Construction, Sewer and Storm Drain |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 47 | Construction, Sidewalk and Driveway |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 56 | Construction, Utility/Underground Projects |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 59 | Construction and Upgrades, Wastewater Treatment Plant |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 60 | Construction, Water System/Plants, Main and Service Line |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 63 | Lime Slurry Removal Services |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 77 | Maintenance and Repair, Pipe Culvert |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 78 | Maintenance and Repair, Pipeline (Includes Removal and Relocation) |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 81 | Maintenance and Repair, Sewer and Storm Drain (Including Removal) |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 82 | Maintenance and Repair, Sidewalk and Driveway (Including Removal) |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 89 | Maintenance and Repair, Utility/Underground Projects |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 91 | Maintenance and Repair, Wastewater Treatment Plant |
| 913 (Construction Services, Heavy – Including Maintenance and Repairs) | 92 | Maintenance and Repair, Water System, Main and Service Line |
| 914 (Construction Services, Trade (New Construction)) | 27 -88 | Construction Trades (various) |
| 918 (Consulting Services) | 16 | Archeological Consulting |

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|---------------------------------------------|----|-------------------------------------------------------------------------------------------|
| 918 (Consulting Services) | 41 | Energy Conservation Consulting |
| 918 (Consulting Services) | 42 | Engineering Consulting |
| 918 (Consulting Services) | 43 | Environmental Consulting |
| 918 (Consulting Services) | 46 | Feasibility Studies (Consulting) |
| 918 (Consulting Services) | 55 | Geological Consulting and Study |
| 918 (Consulting Services) | 72 | Lakes, Rivers, and Other Waterway Management Consulting Services |
| 918 (Consulting Services) | 74 | Legal Consulting |
| 918 (Consulting Services) | 97 | Utilities: Gas, Water, Electric Consulting |
| 925 (Engineering Services, Professional) | 17 | Civil Engineering |
| 925 (Engineering Services, Professional) | 24 | Desalination (Process and Facilities) Engineering |
| 925 (Engineering Services, Professional) | 28 | Drainage Engineering |
| 925 (Engineering Services, Professional) | 33 | Engineer Services, Professional |
| 925 (Engineering Services, Professional) | 34 | Energy Management Engineering |
| 925 (Engineering Services, Professional) | 35 | Environmental Engineering |
| 925 (Engineering Services, Professional) | 36 | Engineering Services (Not Otherwise Classified) |
| 925 (Engineering Services, Professional) | 37 | Facilities Design Services, Engineering |
| 925 (Engineering Services, Professional) | 44 | General Construction: Management, Scheduling, Cost Estimation – Engineering |
| 925 (Engineering Services, Professional) | 45 | Geological Engineering |
| 925 (Engineering Services, Professional) | 46 | Geotechnical Engineering |
| 925 (Engineering Services, Professional) | 58 | Irrigation; Drainage: Flood Control/Engineering |
| 925 (Engineering Services, Professional) | 61 | Land Development and Planning/Engineering |
| 925 (Engineering Services, Professional) | 70 | Municipal Engineering |
| 925 (Engineering Services, Professional) | 77 | Pollution Control Engineering |
| 925 (Engineering Services, Professional) | 78 | Power Generation, Transmission, Distribution - Engineering |
| 925 (Engineering Services, Professional) | 83 | Sanitary Engineering |
| 925 (Engineering Services, Professional) | 87 | Sewage Collection, Treatment, and Disposal Engineering |
| 925 (Engineering Services, Professional) | 96 | Waste Water Treatment Engineering |
| 925 (Engineering Services, Professional) | 97 | Water Supply, Treatment, and Distribution/Engineering |
| 926 (Environmental and Ecological Services) | 14 | Air Pollution Control Services (Including Data Collection Research and Development, etc.) |
| 926 (Environmental and Ecological Services) | 23 | Auditing Services, Environment |
| 926 (Environmental and Ecological Services) | 29 | Contaminated Groundwater Services (Including Discharge Pipe Installation) |
| 926 (Environmental and Ecological Services) | 40 | Ecological Services |
| 926 (Environmental and Ecological Services) | 41 | Ecosystem Development, Management and Protection Services |
| 926 (Environmental and Ecological Services) | 42 | Environmental Services (Not Otherwise Classified) |
| 926 (Environmental and Ecological Services) | 52 | Impact Studies, Environmental |
| 926 (Environmental and Ecological Services) | 62 | Noise Testing Services |
| 926 (Environmental and Ecological Services) | 70 | Permitting Services, Environmental |
| 926 (Environmental and Ecological Services) | 72 | Planning and Advisory Services, Environmental |
| 926 (Environmental and Ecological Services) | 83 | Site Assessment, Environmental |
| 926 (Environmental and Ecological Services) | 85 | Soil, Soil Vapor, and Groundwater Sampling and Analysis (Including Disposal) |
| 926 (Environmental and Ecological Services) | 88 | Storm Water Discharge Testing Services |
| 926 (Environmental and Ecological Services) | 90 | Subsurface Testing, Environmental |
| 926 (Environmental and Ecological Services) | 91 | Tank Testing and Disposal Services, Storage (Including |

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| | | Underground Types) |
| 926 (Environmental and Ecological Services) | 94 | Water Pollution Services |
| 926 (Environmental and Ecological Services) | 95 | Water/Wastewater Conservation Services |
| 926 (Environmental and Ecological Services) | 96 | Wetland Delineations (Including Assessments) |
| 946 (Financial Services) | 25 | Banking Services |
| 946 (Financial Services) | 30 | Cash/Securities and Bonding Services |
| 946 (Financial Services) | 38 | Custom Brokerage Services (Including Stocks and Bonds) |
| 946 (Financial Services) | 48 | Financial Advisor |
| 946 (Financial Services) | 49 | Financial Services (Not Otherwise Classified) |
| 946 (Financial Services) | 56 | Investment Management Services |
| 946 (Financial Services) | 60 | Loan Administration |
| 946 (Financial Services) | 66 | Monetary Systems (Including Analysis, Liquidity, Policy, etc.) |
| 946 (Financial Services) | 75 | Securities and Commodities Market Services (Including Direct or Indirect Purchases, Sales and Transactions of Equities, Fixed Income, Options, and Derivatives on an Agency and Principal Basis) |
| 946 (Financial Services) | 85 | Trusts, Estates and Agency Accounts |
| 958 (Management Services) | 05 | Asset Management Services |
| 958 (Management Services) | 12 | Bio-Solids Management Services |
| 958 (Management Services) | 26 | Construction Management Services |
| 958 (Management Services) | 39 | Financial Management Services |
| 958 (Management Services) | 77 | Project Management Services |
| 958 (Management Services) | 85 | Soil and Land Management Services (Including Testing, Protection, Preparation, Planning, etc.) |
| 961 (Miscellaneous Services, No 1. (Not Otherwise Classified)) | 01 | Archeological Services |
| 961 (Miscellaneous Services, No 1. (Not Otherwise Classified)) | 32 | Environmental Impact Studies |
| 961 (Miscellaneous Services, No 1. (Not Otherwise Classified)) | 49 | Legal Services, Attorney |
| 961 (Miscellaneous Services, No 1. (Not Otherwise Classified)) | 85 | Utility Services, Water |
| 961 (Miscellaneous Services, No 1. (Not Otherwise Classified)) | 91 | Water and Petroleum Pipeline Services |
| 962 (Miscellaneous Services, No 2. (Not Otherwise Classified)) | 14 | Blue Printing Services: Blue Prints, Blue Line, Large Engineering |
| 962 (Miscellaneous Services, No 2. (Not Otherwise Classified)) | 39 | Hauling Services |
| 962 (Miscellaneous Services, No 2. (Not Otherwise Classified)) | 50 | Leak Detection Services: Gas, Water, Chemical |
| 962 (Miscellaneous Services, No 2. (Not Otherwise Classified)) | 52 | Mapping Services (Including Cartography and Surveying Services (Not Aerial – See 902-33 and 905-10 for Aerial Mapping and Surveying Services) |
| 962 (Miscellaneous Services, No 2. (Not Otherwise Classified)) | 92 | Video Scanning of Sewers, Water Wells, etc. |
| 962 (Miscellaneous Services, No 2. (Not Otherwise Classified)) | 94 | Water Services, Bottled and Bulk Delivery (Tanker Services) |
| 962 (Miscellaneous Services, No 2. (Not Otherwise Classified)) | 96 | Well Services (Including Oil, Gas, and Water): Drilling, Plugging, Consulting, Maintenance and Repair |
| 968 (Public Works and Related Services) | 18 | Back Flow Preventer Testing Services |

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|-----------------------------------------|----|-------------------------------------------------------------------------------------------------------------------------------------------|
| 968 (Public Works and Related Services) | 47 | Inspection Services, Construction Type |
| 968 (Public Works and Related Services) | 63 | Relocation and/or Removal Services for Utility Works |
| 968 (Public Works and Related Services) | 66 | Right of Way Services (Including Title, Appraisal, Negotiation, Closing, Relocation, Condemnation, etc.) |
| 968 (Public Works and Related Services) | 73 | Storm Drain Cleaning, Repair, and Sludge Removal Services |
| 968 (Public Works and Related Services) | 78 | Tank Installation, Removal, Disposal, and Related Services (Including Septic and Underground Type) |
| 968 (Public Works and Related Services) | 91 | Water Supply Analysis, Infrastructure Analysis, Water Quality Analysis, and Long-Term Planning |
| 968 (Public Works and Related Services) | 92 | Water Supply Plant Operating and Monitoring System Services (Including Water Resources Development and Water Quality Management Services) |
| 968 (Public Works and Related Services) | 96 | Water and Wastewater Treatment Services |

DBE Compliance Standards

Entities receiving federal loan assistance through the SRF programs are required to remain in compliance with DBE requirements through all phases of the project including: Project Application Phase, Commitment Phase, Planning/Design Phase, and Construction Contract Phase(s).

Entities and prime contractors are encouraged to review the TWDB's DBE Compliance Policy (DW-099/CW-099) and requirements for compliance for each phase and the respective form(s). Entities and prime contractors are also reminded that a project bidders list is required by the U.S. EPA DBE program. The list must include all firms that bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs. The bidders list must be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the loan. For entities receiving identified loans, the bidders list must be kept until the project period for the identified loan has ended (See form TWDB-0216)

Additionally, backup documentation supporting the solicitation methods utilized must be included with the forms to determine if DBE requirements were met. Entities and prime contractors should make certain that the required DBE language is included in the solicitation prior to advertisement. Copies of the RFQ, advertisement/affidavit, pre-bid meetings, fax/email/letter correspondence, website postings, and governmental/trade publications are all examples of adequate backup to determine if a "Good Faith Effort" was undertaken.

Due to U.S. EPA DBE program reporting requirements, the TWDB requests that all information on form TWDB-0373 be completed as accurate as possible, including exact contract amounts, MBE/WBE status, and executed dates. Entities and Prime Contractors seeking to utilize MBE/WBE contractors must include the respective firm's certification with form TWDB-0373 for validation. Once reviewed, TWDB staff reports MBE/WBE contractor utilization for each federal program on a quarterly basis.

It is important for the Entity and Prime Contractor to coordinate closely During the Construction Contract phase to ensure that all DBE requirements have been met throughout all construction phases to avoid project delays or loan commitment expiration deadlines.

Contract Administration Requirements

Each procurement contract signed by an EPA financial assistance agreement recipient, including those for an identified loan under an EPA financial assistance agreement capitalizing a revolving loan fund, must include the following term and condition:

Appendix A to Part 33—Term and Condition

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.

Additionally, the following U.S. EPA DBE regulations apply:

- (a) A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.*
- (b) A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.*
- (c) If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor.*
- (d) A recipient must require its prime contractor to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.*

DBE Program Regulations

TWDB DBE Program Webpage:

<http://www.twdb.state.tx.us/financial/programs/DBE/dbe.asp>

DBE Final Rule (40 CFR Parts 30, 31, 33, 35, and 40):

<http://www.epa.gov/osbp/pdfs/dbe/final%20dbe%20rule.pdf>

MBE/WBE Certification Fact Sheet:

http://www.epa.gov/osbp/pdfs/dbe/mbe_wbe_certification.pdf

Glossary

Construction means erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.

Disadvantaged business enterprise (DBE) means an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102–389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.

Equipment means items procured under a financial assistance agreement as defined by applicable regulations (for example 40 CFR 30.2 and 40 CFR 31.3) for the particular type of financial assistance received.

Good faith efforts means the race and/ or gender neutral measures described in subpart C of this part.

Minority business enterprise (MBE) means a Disadvantaged Business Enterprise (DBE) other than a Small Business Enterprise (SBE), a Labor Surplus Area Firm (LSAF), a Small Business in Rural Areas (SBRA), or a Women’s Business Enterprise (WBE).

Recipient means an entity that receives an EPA financial assistance agreement or is a sub-recipient of such agreement, including loan recipients under the Clean Water State Revolving Fund Program, Drinking Water State Revolving Fund Program, and the Brownfields Cleanup Revolving Loan Fund Program.

Services means a contractor’s labor, time or efforts provided in a manner consistent with normal business practices which do not involve the delivery of a specific end item, other than documents (*e.g.*, reports, design drawings, specifications).

Supplies means items procured under a financial assistance agreement as defined by applicable regulations for the particular type of financial assistance received.

Women’s business enterprise (WBE) means a business concern which is at least 51% owned or controlled by women for purposes of EPA’s 8% statute or a business concern which is at least 51% owned and controlled by women for purposes for EPA’s 10% statute. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband’s 50 percent interest in her share. Similarly, a business concern which is more than 50 percent owned by a married man will not become a qualified WBE by virtue of his wife’s 50 percent interest in his share.