



Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

Massachusetts Department of Environmental Protection
Division of Municipal Services
Steven J. McCurdy, Director
September 12, 2012

Ensuring DM/WBE Compliance for Watershed Projects

Grant projects using federal funds are required to undertake a good faith effort to utilize Disadvantaged Minority and Women -owned Business Enterprise (DM/WBE) services.

Goals for DM/WBE participation in federally-funded projects are currently 3.4% DMBE and 3.8% DWBE for all projects. The goals are based on total project cost, which includes the grant amount plus any required or voluntary match. Goals for state-funded projects are specified by MassDEP's Compliance Office, and are spelled out in the project contract.

Grantees are required to make a good faith effort to meet those goals. Should a project fail to meet one or both goals, the MassDEP Compliance Office may grant a waiver for the portion of the goal that is not met, provided that the good faith effort to meet the goals is adequately documented and submitted to the MassDEP Compliance Office in a timely manner.

This information is intended to help grantees (for example, 319, 604b, and Capital Project programs) to meet the DM/WBE requirements of their project. Final decisions are made by the MassDEP Compliance Office.

Overview

Each purchase or subcontract required for a project represents an opportunity to engage a DM/WBE contractor. The Attachment B budget page of the project contract indicates line item allocations for subcontracts, materials, and other purchases that should be targeted for DM/WBE opportunities. When a grantee is ready to expend these funds, these steps should be followed for **each purchase or subcontract**:

1. Go to the Supplier Diversity Office (SDO) website, <http://www.somwba.state.ma.us/>. Using the "Find Certified Businesses" function, do a thorough search for any DMBE and/or DWBE vendors that might be able to provide the goods or services you seek. NOTE: To do this, you must select either MBE, WBE, or both, **plus** DBE. (It is not possible to exclusively search for the combinations DMBE or DWBE.) Check each result and choose those that are both DBE and M/WBE. *Keep the printouts.*
2. Ensure that each vendor identified in Step 1 receives a notice of the solicitation. Depending on the procurement procedure being followed, this may be a phone call, written notice, or mailing of the bid package. In any case, *keep the documentation of actions taken.* This includes phone logs, written notices, mailing receipts, and copies of published ads.
3. Include the DM/WBE goals in the solicitation. *Keep a copy of the solicitation.*
4. *Keep a log* of who responds to your solicitation, and note whether they are a DM/WBE vendor.

5. *Keep a log* of DM/WBE vendors who received notice but did not respond.
6. Following the required procurement practices, select the preferred vendor. *Keep notes of the procurement process* detailing why the vendor was selected, and why others (especially DM/WBE bidders) were not selected.

Keeping documentation of these steps each time grant or match funds are expended for materials, services, or contractors will ensure that proper backup is available to support a waiver application from DM/WBE goals, should one be needed.

A few additional notes

1. Goals are based on the total project budget amount, which includes grant amount plus match. Match work can and should be used to meet DM/WBE goals. Steps outlined above should be followed for match contribution as well as grant expenditures.
2. Only those businesses that are registered with SDO as an MBE or WBE and a Disadvantaged Business Enterprise at the time of the search, or those that are in the process of becoming registered at the time of the search, can be used to meet DM/WBE goals. MBEs and WBEs that are not also DBEs can no longer count toward the goals.
3. Waivers must be in place before a project closes on June 30 of the contract final year. Plan accordingly! Waiver applications should be filed by April 30 in order to allow time for processing.
4. The steps required for a good faith effort are outlined in the *Request for Waiver*, and supported by the checklist found below. Essentially, grantees are required to ensure that qualified DM/WBE bidders have an opportunity to participate in the program. However, grantees are not required to select higher bids or otherwise violate common sense and required procurement practices in order to engage DM/WBE participation.

Waiver Application Process

1. MassDEP Watershed Projects program staff will assist with preparation of a waiver application.
2. The checklist found below can be used to help ensure that the necessary documents have been assembled.
3. The *Request for Waiver* and checklist, with all attachments, should be submitted to the MassDEP grant Program Coordinator and to the MassDEP Compliance Office, per instructions found on the form.

CHECKLIST FOR DM/WBE GOOD FAITH EFFORT

1. Do you follow Ch. 30b procurement practices? If not, what procurement practices does your organization follow? Make sure you adhere to the required procurement practices. You are not required to contract with vendors that do not submit competitive and eligible bids in conformance with your required practices, regardless of their DM/WBE status,
2. Provide a list of each bid or purchase opportunity that could have yielded DM/WBE participation. **For each opportunity**, at minimum, provide the documentation described on Page 1, including
 - a. The solicitation, record of phone quotes, or other summary of the process
 - b. Printouts of SDO search results for qualified DM/WBEs, dated on the day the search was done
 - c. A list of names, addresses, contact information, method of contact for each SDO certified company that was made aware of the bid opportunity
 - d. Copies of advertisements that appeared announcing the bid opportunity, dated and labeled with source
 - e. Detailed statement of why each DM/WBE identified in Step 2b did not secure the winning bid
3. Write a letter describing the process that was followed for each opportunity listed in Step 2. Include a description of services being sought, special requirements, how the solicitation was developed and structured to encourage DM/WBE participation, results of the vendor selection, and any other information that documents good faith efforts that were made.
4. As instructed on the Waiver Form, send this package with the completed Waiver Form to the grant Program Coordinator and to the MassDEP Compliance Office.