

**Presented and Adopted: June 4, 2020**  
**SUBJECT: Approval and Adoption of the Revised Business  
Development Plan**

**#20-42**  
**RESOLUTION**  
**OF THE**  
**BOARD OF DIRECTORS**  
**OF THE**  
**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**

The Board of Directors ("Board") of the District of Columbia Water and Sewer Authority ("the Authority or DC Water") at the Board meeting held on June 4, 2020, upon consideration of a joint use matter, decided, by a vote of eleven (11) in favor and none (0) opposed, to take the following action with respect to the Approval and Adoption of the Revised Business Development Plan.

**WHEREAS**, on June 3, 1999, the Board, through Resolution #99-41, approved and adopted DC Water's Business Development Plan reflecting DC Water's commitment to promoting economic and business development in the District of Columbia and the local region it serves and actively encouraging and supporting the participation of certified local businesses, local small business enterprises, and disadvantaged (minority and women-owned) business enterprises in its contracting and procurement activities, at all tier levels; and

**WHEREAS**, on June 4, 2009, the Board, through Resolution #09-75, in accordance with 21 DCMR §5370.3, approved and adopted DC Water's Revised Business Development Plan, effective June 12, 2009, that incorporated revisions to comply with the US Environmental Protection Agency's Disadvantaged Business Enterprise Program regulations, provided in 40 CFR Parts 30, 31, 33, 35, and 40; and

**WHEREAS**, on June 25, 2012, DC Water amended the Business Development Plan revising the DC Water's logo and name in the document from DCWASA to DC Water; and

**WHEREAS**, the Business Development Plan must be reviewed every two (2) years to determine whether, based on performance, the Board's objectives are being achieved; and

**WHEREAS**, on January 8, 2020, the Governance Committee met to consider the General Manager's proposed revisions to the Business Development Plan; and

**WHEREAS**, on January 8, 2020, the General Manager presented revisions to address the Board's requirements, the 2017 RSM Business Development Plan Internal Audit

Report findings and recommendations, existing (federal) guidance and practices, and other issues and requests by DC Water staff and contractors; and

**WHEREAS**, the changes to the Business Development Plan: 1) updated language or citations that are outdated; 2) proposed changes to the LSBE program, created by the Board of Directors; 3) reconciled the EPA Fair Share Objectives program; and 4) proposed a new DBE program for projects not funded by the EPA; and

**WHEREAS**, at the conclusion of the presentation, the Governance Committee raised additional questions regarding proposed revisions and agreed to continue the discussion at the March 2020 committee meeting; and

**WHEREAS**, on March 20, 2020, the Governance Committee met to continue the review of the General Manager's proposed revision to the Business Development Plan; and

**WHEREAS**, on March 20, 2020, the General Manager continued the presentation of the proposed revisions, providing an overview of the specific elements that include: 1) recognizing certifications under the EPA Fair Share Objectives; 2) inclusion of mandatory commercially useful function performance requirements for firms to be recognized as certified; 3) clarification of required good faith efforts, including engagement between bidding primes and certified firms; and 4) robust monitoring and reporting; and

**WHEREAS**, the General Manager outlined a new proposed DBE/WBE program for non-EPA funded contracts over \$1 million, whose specific elements include: 1) DC Water's setting overall DBE goals every three (3) years to be approved by DC Water's Board of Directors; and 2) DC Water's setting project specific goals; and

**WHEREAS**, the General Manager provided additional details regarding the revised Business Development Plan regarding the recognized certifications including: 1) any US DOT DBE certification; 2) the Small Business Administration's 8(a) certification; 3) WBE certification; and 4) the District of Columbia's local small business enterprise certification; and

**WHEREAS**, the General Manager also presented the specific proposed administrative changes to the outreach and capacity building elements to the Business Development Plan; and

**WHEREAS**, the Governance Committee determined to take additional time to review and consider the proposed revisions to the Business Development Plan and discuss any additional issues and questions at the May 2020 committee meeting; and

**WHEREAS**, on May 13, 2020, the Governance Committee met to consider the proposed revisions to the Business Development Plan; and

**WHEREAS**, the General Manager reviewed the key proposed revisions to the Business Development Plan as described above, emphasizing the numerous benefits of the Plan

including: 1) development of mentor-protégé program standards; 2) providing greater clarity for all participants of DC Water's procurement programs; 3) aligning DC Water's programs more fully with current standards and practices of federal and local governments; 4) removing barriers that limited the potential for certified firm participation; 5) strengthening capacity building efforts to encourage certified firm participation; 6) providing information to certified firms and business partners in timely fashion; and 7) strengthening education and outreach components; and

**WHEREAS**, on May 13, 2020, after further discussion and consideration, the Governance Committee recommended the revised Business Development Plan for Board approval and adoption and concurs with the General Manager's proposal to review the plan every two (2) years to assess and recommend improvements.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The Board of Directors hereby authorizes the General Manager to implement the revised Business Development Plan as set forth in Attachment A, "District of Columbia Water and Sewer Authority Business Development Plan"
2. The General Manager is directed to review the Business Development Plan every two (2) years to assess and propose recommendations for modification and improvement.

This resolution is effective immediately.

  
Secretary to the Board of Directors

**ATTACHMENT A**

**District of Columbia Water and Sewer Authority  
Business Development Plan**

**DISTRICT OF COLUMBIA  
WATER AND SEWER AUTHORITY**



**Business Development Plan  
Effective Date: June 12, 2009**

Amended 01/25/2012 – DC Water logo and name  
Amended 06/27/2020

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## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY BUSINESS DEVELOPMENT PLAN

### Policy Statement

The District of Columbia Water and Sewer Authority (DC Water) is committed to promoting economic and business development in the District of Columbia and the region it services. DC Water provides water and wastewater treatment services to one of the most diverse cities and regions in the country. In carrying out its mission, DC Water will seek to reflect this diversity in meeting its business needs. As such, DC Water will actively encourage and support the participation of certified local business enterprises (LBEs), local small business enterprises (LSBEs), disadvantaged business enterprises (DBEs), minority business enterprises (MBEs) and women-owned business enterprises (WBEs) in its contracting and procurement activities.

This Business Development Plan (BDP) provides the framework for the design and implementation of programs and activities that will promote and enhance participation of LBEs, LSBEs, DBEs, MBEs and WBEs. The Chief Executive Officer (CEO) or his/her designee is responsible for implementing and administering programs, procedures and processes, consistent with this BDP, Authority policies and applicable regulations and laws.

To this end, DC Water will employ every reasonable effort to ensure that LBEs, LSBEs, DBEs, and WBEs are afforded full and equitable opportunities to participate as vendors, prime contractors, subcontractors and joint venture partners for goods and services including construction and architectural and engineering (A/E) contracts funded by the District of Columbia and the user jurisdictions.

Pursuant to requirements established as a condition for receipt of federal grants and federal financial assistance, DC Water will also implement a Disadvantaged Business Enterprise Program to encourage and facilitate participation by MBEs/WBEs in accordance with the Federal Fair Share Objectives. This program will apply to DC Water's capital A/E and construction projects, where appropriate.

### **I. CERTIFIED LOCAL AND LOCAL SMALL BUSINESS ENTERPRISE PROGRAM**

#### **A. Overall Local and Small Participation Goals**

The DC Water Board of Directors (the Board) may establish overall goals for participation by LBEs and LSBEs in DC Water's non-federally assisted procurement program. These goals will be reviewed every two (2) years to determine whether, based on performance, the Board's objectives are being achieved. The DC Water LBE/LSBE program is race and gender neutral.

The overall goals will apply to competitively solicited contracts for:

- (a) Goods and Services estimated at \$1,000,000 or less;
- (b) Construction estimated at \$1,000,000 or less; and
- (c) Architectural-Engineering (A/E) services estimated at \$1,000,000 or less.

The goals will be expressed as a percentage of the total eligible dollar volume of all "Open with Preference" contracts and purchase orders awarded for each category and may be achieved by LBE/LSBE participation as a vendor, prime contractor, subcontractor, or joint venture provided there is sufficient competition for various types of procurements (process described in Section I.B, "LBE/LSBE Utilization").



These goals do not apply to procurement actions identified as exceptions in the DC Water Procurement Regulations.

**B. LBE/LSBE Utilization**

**1. Large Procurements (For procurements between \$100,000 and \$999,999)**

**Preference Program**

To facilitate and encourage the participation and utilization of LBEs/LSBEs in the procurement process, a preference will apply to competitive solicitations for goods and services and construction and A/E. The preference will be used in the evaluation of bids and proposals.

The preference provides for the utilization of additional points in the evaluation of proposals and the utilization of a preference percentage reduction in price for bids. The preferences are as follows:

**a. Preference Points for Proposals:**

- (1) Certified Local=5 points
- (2) Certified Local and Small=10 points

The maximum number of preference points for a proposal is ten (10) points.

**b. Preference Price Reduction for Bids (evaluation only):**

- (1) Certified Local=5%
- (2) Certified Local and Small=10%

The maximum preference price reduction for a single bid is a total of ten percent (10%) or \$100,000, whichever is less.

Prime contractors may subcontract or joint venture with LBEs/LSBEs. Preference will be determined proportionate to the proposed LBE/LSBE participation on the contract. For example, if a prime contractor subcontracts to a certified local business (which is eligible for a 5.0% preference price reduction) for 25% of the work, the prime contractor would be eligible for 1.25% reduction in the bid price evaluation. The chart below

displays how preference points are calculated:

<b>If the prime is a:</b>	<b>(and) Performs % of the work:</b>	<b>(and) the status of the Sub-Contractor is:</b>	<b>(then) The preference points are</b>	<b>Calculated By</b>
Certified LBE	50% +1	N/A	5	Bid receives 5%
Certified LSBE	50% + 1	N/A	10	Bid receives 10%
Certified LBE	Less than 50%	N/A	0-5	% of work performed by certified LBE sub(s) *5%
Certified LSBE	Less than 50%	N/A	0-10	% of work performed by certified LSBE sub(s)*10%
Non-Certified	N/A	Certified LBE	0-5	% of work performed by certified LSBE sub(s)*10%
Non-Certified	N/A	Certified LSBE	0-10	% of work performed by certified LBE sub(s) *5%

## 2. Simplified Acquisitions (For small purchases, between \$25,000 and \$99,999)

Requests for quotes may be limited to LBEs/LSBEs when there are at least two (2) such businesses capable of providing the good, service or construction and can satisfy all applicable DC Water requirements and conditions. Further, to facilitate and encourage the participation of LBEs/LSBEs in the simplified acquisition process, preference will apply in the evaluation of bids and quotations as follows:

Preference Price Reduction for Bids (evaluation only):

- (1) Certified Local=5%
- (2) Certified Local and Small=10%

The maximum preference price reduction for a single bid is ten percent (10%).

## 3. Micro Purchases

To the extent possible, micro purchases (under \$25,000), including those made with DC Water Purchase Cards will be made with certified LBEs/LSBEs.

The Department of Procurement is responsible for identifying certified LBEs/LSBEs for consideration.

## 4. Waivers

The CEO shall have the authority to determine when it is in the best interest of DC Water to waive bonding and other requirements for solicitations estimated not to exceed \$250,000 if the CEO determines:

- a. A waiver will assist LBEs/LSBEs by removing requirements that may inhibit LBE/LSBE participation in DC Water contracting and procurement activities; and
- b. The interests of DC Water are not adversely affected.

## C. Eligible Program Participants

To achieve the goals established by the Board, DC Water encourages the participation of local and small businesses whose primary business operations are located in the District of Columbia or one of the DC Water user jurisdictions, which comprises Fairfax County, Virginia; Loudoun County, Virginia; Montgomery County, Maryland; and Prince George's County, Maryland. Moreover, eligible program participants must have a current certification as a local or local small business enterprise by one of the following jurisdictions:

1. District of Columbia's "Certified Business Enterprise Program";
2. Montgomery County's "Minority, Female and Disabled Business Enterprise" Certification Program;
3. Montgomery County's "Local Small Business Reserve" Program;
4. Prince George's County's "County Based Business Certification" Program;
5. Virginia Department of Small Business and Supplier Diversity's "Small, Women and Minority Owned Business" Program as accepted by Fairfax and Loudoun Counties;
6. Maryland Department of Transportation's "Small and Disadvantaged Business Enterprise Certification" Programs for firms principally located in Montgomery and Prince George's Counties; and

7. Other certification programs recognized by the District of Columbia or a DC Water user jurisdiction and meets the District of Columbia's or user jurisdiction's criteria for local and local and small business enterprise.

A business desiring to take advantage of the preference points for local and small businesses for a specific solicitation must have verifiable documentation of its principal location and current certification from a certifying agency listed above prior to or on the bid opening or proposal due date.

#### D. Monitoring and Reporting

DC Water will implement procedures for monitoring LBE/LSBE participation as prime contractors and subcontractors in DC Water's contracting and purchasing program. An annual report will be submitted to the Board of Directors.

## **II. DISADVANTAGED/WOMEN BUSINESS ENTERPRISE PROGRAM FOR NON-FEDERALLY ASSISTED PROJECTS**

For non-federally-assisted projects (Goods/Services, Construction and A/E) over \$1,000,000, DC Water has established a Disadvantaged/Women Business Enterprise (DBE/WBE) Program. The purpose of the program is to:

1. Ensure nondiscrimination in the award and administration of DC Water contracts;
2. Create a level playing field on which DBE/WBEs can compete fairly for DC Water contracts;
3. Ensure that the DBE/WBE Program is narrowly tailored in accordance with applicable laws and DC Water Procurement Regulations;
4. Ensure that only firms meeting the certification standards are permitted to be counted as DBEs/WBEs;
5. Assist in the removal of barriers to the participation of DBEs/WBEs on DC Water contracts; and
6. Assist in the development of firms that can compete successfully in the marketplace outside the DBE/WBE Program.

#### A. Quotas

DC Water will not use quotas or set-asides in any way in the administration of this DBE/WBE program.

#### B. DBE/WBE Program Design

DC Water's DBE/WBE Program includes the following features:

1. Tri-Annual Goals for certified DBE's and WBE's
2. Project Specific Goal Setting
3. Good Faith Efforts
4. Compliance Monitoring
5. Reporting

#### C. DBE/WBE Certification

DC Water's DBE/WBE Program is not race-based. For the purposes of satisfying the DBE/WBE goals, DC Water recognizes the following certifications:

#### Disadvantaged Business Enterprise Certification

- The United States Small Business Administration's "8(a) Business Development" Program;
- The United States Small Business Administration's "Small Disadvantaged Business (SDB)" Certification;
- Any State Department of Transportation's "Disadvantaged Business Enterprise (DBE)" Certification;
- The District of Columbia Department of Small and Local Business Development's "Local Small Business Enterprise Certification";
- Any other government or independent private organization that maintains a "Disadvantaged Business Enterprise" certification.

#### Women Business Enterprise Certification

- Any government or independent private organization that maintains a "Women Business Enterprise" certification.

Firms with certifications that do not match the list above cannot be used to satisfy the DBE/WBE goals.

#### D. DBE/WBE Goals

DC Water will establish goals for DBEs and WBEs on a triennial basis. Separate DBE and WBE goals will be established for A/E, construction, and goods and services. The goals will be submitted to the Board of Directors in three-year intervals not later than July 31st. Once established, the goals will remain in effect for three years.

In establishing the three-year goals, DC Water will consult with disadvantaged businesses, women's, and general contractor groups, community associations, and other organizations which could be expected to have information concerning the availability of disadvantaged businesses, their challenges, as well as the impact of DC Water's efforts to establish a level playing field for participation.

#### E. Project Specific Goal Setting

Project specific goals will be established only on those non-federally assisted contracts that have subcontracting possibilities. Goals need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs/WBEs to perform the particular type of work). The contract work items will be compared with eligible DBEs/WBEs willing to work on the project. A determination will also be made to decide which items are likely to be performed by the prime contractor and which ones are likely to be performed by the subcontractor(s). The goal will then be incorporated into the solicitation documents by no later than the 90% design.

Contract goals will be expressed as a percentage of the total amount of the eligible project costs committed to DBE/WBEs. Actual achievement of goals will be based on payments made to the DBE/WBE firms and not only on contracts awarded. DC Water will track actual spending over the life of the project.

There are several factors to consider when establishing project specific goals:

- Scope of the project
- Location of the project
- Duration of the Project
- The type of contractor who would most likely bid as prime on the project
- Subcontracting opportunities on the Engineer's Estimate
- Available DBE/WBEs for the type and area of work

➤ Other factors that may vary from project to project

#### 1. Design-Build Contracts

If DC Water uses design-build contracting, DBE/WBE goals will be established for both the design phase and construction phase of the design-build project.

### F. Counting DBE/WBE Participation

DC Water will count DBE/WBE participation toward overall and contract goals as provided in the project specifications for the prime contractor, subcontractor, joint venture partner, or vendor of material or supplies. Certified DBEs and WBEs can participate

Work performed will be counted as fulfilling the participation goals only when the firm is certified and:

1. A DBE/WBE performs a commercially useful function when it is responsible for the execution of the contract work and is carrying out its responsibilities by actually performing, managing and supervising the work involved. To perform a commercially useful function as a prime, the DBE/WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering materials, and installing (where applicable) and paying for the material itself. To determine whether a DBE/WBE is performing a commercially useful function, DC Water will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work to be performed, in addition to the DBE/WBE credit claimed for work performance and other relevant factors. A DBE/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DBE participation.
2. If a DBE/WBE does not perform or exercise responsibility for at least 30 percent (30%) of the total cost of its contract with its own work force, or the DBE/WBE subcontracts a greater portion of the contract work than would be expected based on normal industry practice for the type of work involved, DC Water will presume that it is not performing a commercially useful function.

A certified firm which is a conduit or pass through or which is not performing a commercially useful function will not be considered toward fulfillment of contract participation goals.

### G. Failure to Achieve the Goals

DC Water contractors and subcontractors cannot be penalized, or be treated as in noncompliance with this program if DBE/WBE participation falls short of the established project specific goals, unless contractors and subcontractors fail to administer the program in good faith.

### H. Good Faith Efforts

Bidders are to make good faith efforts to identify and subcontract portions of the non-federally assisted contract to DBE/WBEs. DC Water treats bidders'/offerors' compliance with good faith effort requirements as a matter of responsiveness. A responsive bid/proposal is meeting all the requirements of the advertisement and solicitation.

Each solicitation for which a project specific goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of known DBEs/WBEs that will participate in the contract;

2. A description of the work that each DBE/WBE will perform;
3. The contract value of each DBE/WBE;
4. Signed documentation of the Prime's intent to use the DBEs/WBEs identified to participate in the contract (with DBE/WBE confirmation);
5. Evidence of good faith efforts.

#### I. Evidence of Good Faith Efforts

DC Water will not execute contracts to bidders unless it has been determined that the "good faith efforts" have been properly documented.

Adequate good faith efforts mean that the bidder took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient DBE/WBE participation. Adequate good faith efforts also mean that the bidder actively and aggressively sought DBE/WBE participation. Mere pro forma efforts are not considered good faith efforts. DC Water will consider the quality, quantity, and intensity of the different kinds of efforts a bidder has made. Listed below are examples of the types of actions a bidder will take in making a good faith effort to meet the goals and are not intended to be exclusive or exhaustive, nor is it intended to be a mandatory checklist.

1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising, written notices, use of verifiable electronic means) the interest of all certified DBEs/WBEs who have the capability to perform the work of the contract. Whenever possible, the bidder must solicit this interest within at least 30 days prior to bid opening to allow DBEs/WBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs/WBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBE/WBEs to increase the likelihood that the DBE and WBE goals will be achieved.
  - a. Where appropriate, break out contract work items into economically feasible units to facilitate DBE/WBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
  - b. Negotiate with subcontractors to assume part of the responsibility to meet the contract DBE/WBE goals when the work is to be sublet.
3. Providing interested DBEs/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. Negotiating in good faith with DBEs/WBEs. Such efforts will be shown by producing names, addresses, telephone numbers, and information regarding the subcontract opportunity(ies) offered to each DBE/WBE; and evidence as to why additional agreements could not be reached for DBEs/WBEs to perform the work.
  - a. A bidder would consider several factors in negotiating with subcontractors (including DBE/WBE subcontractors), and would take a firm's price and capabilities, as well as, contracting goals into consideration.

However, the fact that there may be some additional costs involved in finding and using DBEs/WBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE or WBE goals (if such costs are reasonable).

- b. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Bidding contractors are not, however, required to accept higher quotes from DBEs/WBEs if the price difference is excessive or unreasonable.
5. Not rejecting DBEs/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associations are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goals.
6. Provide help to the DBEs/WBEs in overcoming bonding, financial, and insurance problems relevant to the subcontract.
7. Making efforts to assist interested DBEs/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available disadvantaged business and women community organizations; Federal, State, and local disadvantaged business/women business assistance offices to identify potential subcontractors.
9. As necessary, contact the Contract Compliance Office within 7 days from the bid opening to give notification of the bidder's inability to get DBE or WBE quotes.
10. Any other evidence that the bidder submits which demonstrates reasonable good faith efforts made to meet the DBE and WBE goals. In addition, DC Water may consider the following:
  - (a) Whether the bidder's documentation reflects a clear and realistic plan for achieving the DBE and WBE goals.
  - (b) The bidder's participation as a mentor to a certified DBE/WBE (Mentor Protégé Program).
  - (c) The bidders' past performance in meeting the DBE and WBE goals.
  - (d) The performance of other bidders in meeting the DBE and WBE goals. For example, when the apparent successful bidder fails to meet the goals, but others meet it, DC Water may reasonably raise the question of whether, with additional reasonable efforts the apparent successful bidder could have met the goals.

If the apparent successful bidder fails to meet the DBE and WBE goals, but meets or exceeds the average DBE and WBE participation obtained by other bidders, DC Water may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made a good faith effort.

If DC Water does not award the contract to the apparent lowest responsive bidder, DC Water reserves the right to award the contract to the next lowest responsive bidder that can satisfy to DC Water that the DBE and WBE goals can be met or that an adequate good faith effort has been made to meet the DBE and WBE goals.

DC Water will ensure that all information is complete, accurate and adequately documents the bidder/offeror's good faith efforts before a commitment by DC Water is made. The Vice President for

Procurement and Compliance or designee is responsible for determining whether a bidder/offeror has documented sufficient good faith efforts.

#### J. Substitution

Prime contractors cannot terminate a DBE or WBE subcontractor without good cause and the written consent of DC Water.

Prior to termination the contractor must notify DC Water of the intent to terminate the DBE/WBE. The DBE/WBE must respond within 10 calendar days regarding the termination. If the DBE/WBE fails to respond within the allotted time frame the termination may be authorized by DC Water.

The contractor must make a good faith effort to replace the defaulting DBE/WBE with another DBE/WBE to the extent needed to meet the contract goal. The contractor must document good faith efforts made to replace the DBE/WBE.

##### 1. Good Faith Efforts when a DBE/WBE is Replaced on a Contract

Contractors must make good faith efforts to replace a DBE/WBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE/WBE, to the extent needed to meet the contract goal. The prime contractor is required to notify DC Water immediately of the DBE/WBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the prime contractor will be required to obtain, prior approval from DC Water, of the substitute DBE/WBE and to provide copies of new or amended subcontracts, and documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, DC Water's Compliance Office may issue an order stopping all or part of payment until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a stop work order or termination for default proceeding.

#### K. Monitoring

DC Water will take the following steps to ensure compliance with this DBE/WBE Program.

1. DC Water will implement a monitoring and enforcement mechanism to verify that work committed to DBEs/WBEs at contract award is actually performed by those. This mechanism will provide for a running tally of actual DBE/WBE attainments (e.g., payments made to DBE/WBE firms), including a means of comparing these attainments to commitments. This will be accomplished by requiring prime contractors to provide information concerning payments to subcontractors. Participation in the program is credited toward overall or contract goals only when payments are made to DBE/WBE firms.
2. Any false, fraudulent, or dishonest conduct in connection with the program, will be enforced by DC Water, as allowed by the existing regulations or applicable laws.
3. DC Water will take steps to actively ensure that prime contractors and subcontractors comply with the DBE/WBE Program.



## L. Reporting

DBE/WBE participation will be reported to the DC Water Board of Directors on an annual basis. These reports will reflect commitments to and payments made to DBE/WBEs on applicable DC Water contracts.

## III. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM FOR FEDERALLY ASSISTED PROJECTS

DC Water has established an outreach, education and fair share objective program designed to encourage participation of certified Minority Business Enterprises and Women Business Enterprises (MBE/WBE), as prime contractors, subcontractors at all tiers, and/or joint venture partners, pursuant to United States Environmental Protection Agency (EPA) regulations found at 40 CFR Section 31.36(e) for federal financially -assisted projects.

### A. MBE/WBE Program Design

In accordance with EPA requirements, DC Water's Fair Share Objectives Program includes the following features:

1. Fair Share Objectives, which are Minority Business Enterprise MBE/WBE participation goals based on an availability analysis performed by DC Water and approved by EPA. These goals may be achieved by MBE/WBE firms participating as a vendor, prime contractor, subcontractor or joint venture on a federally-assisted project.

Separate MBE and WBE goals will be established for A/E and for construction. The objective will be calculated and expressed as a percentage of the eligible capital project value committed to the MBEs/WBEs. DC Water will track actual spending over the life of the project.

2. Pursuant to 40 CFR Part 33.301, six (6) Affirmative Steps (or Six (6) Positive Steps), must be undertaken by DC Water and contractors to inform MBEs/WBEs and encourage their participation. These steps include the following:
  - a. Ensure MBEs/WBEs were 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 MBEs/WBEs on solicitation lists and soliciting them whenever they are potential sources.
  - b. Make information on forthcoming opportunities available to MBEs/WBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by MBEs/WBEs 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 MBEs/WBEs. This included dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by MBEs/WBEs in the competitive process.
  - d. Encourage contracting with a consortium of MBEs/WBEs when a contract was too large for one of these firms to handle individually.

- e. Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) of the Department of Commerce.
- f. Require prime contractors, when subcontracts are being let, to undertake the affirmative steps a through e listed above.

#### B. MBE/WBE Certification

Pursuant to 40 CFR Part 33.204, for the purposes of satisfying the MBE/WBE goals, the EPA recognizes the following certifications:

- The United States Small Business Administration (SBA), under its 8(a) Business Development Program (13 CFR part 124, subpart A) or its Small Disadvantaged Business (SDB) Program, (13 CFR part 124, subpart B);
- The United States Department of Transportation (DOT), under its regulations for Participation by Disadvantaged Business Enterprises in DOT Programs (49 CFR parts 23 and 26);
- Indian Tribal Government, State Government, local Government or independent private organization in accordance with EPA's 8% or 10% statute as applicable.
  - Such certifications shall be considered acceptable for establishing MBE or WBE status, as appropriate, under EPA's DBE Program as long as the certification meets EPA's U.S. citizenship requirement under §33.202 or §33.203.

Firms with minority or women business certifications that do not match the criteria above or have different standards cannot be used to satisfy the EPA Fair Share Objective.

#### C. Counting MBE/WBE Participation

In accordance with 40 CFR Part 33.503, MBE/WBE participation will be counted as follows:

- (a) Only certified MBEs and WBEs are to be counted towards MBE/WBE participation.
- (b) If all project costs attributable to MBE and WBE participation are not eligible for funding under the EPA financial assistance agreement, DC Water may choose to report the percentage of MBE and WBE participation based on the total eligible and non-eligible costs of the project.
- (c) For joint ventures, MBE and WBE participation consists of the portion of the dollar amount of the joint venture attributable to the MBE or WBE. If an MBE's or WBE's risk of loss, control or management responsibilities is not commensurate with its share of the profit, DC Water may direct an adjustment in the percentage of MBE or WBE participation.
- (d) DC Water may not count expenditures to a MBE or WBE that acts merely as a broker or passive conduit of funds, without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices.
  - (1) If 50% or more of the total dollar amount of a MBE's or WBE's prime contract is subcontracted to a non-DBE, the MBE or WBE prime contractor will be presumed to be a broker, and no MBE or WBE participation may be reported.
  - (2) The MBE or WBE prime contractor may rebut this presumption by demonstrating that its actions are consistent with normal practices for prime contractors in its business and that it will actively perform, manage and supervise the work under the contract.

(e) MBE or WBE Truckers/Haulers. DC Water may count expenditures to an MBE or WBE trucker/hauler only if the MBE or WBE trucker/hauler is performing a commercially useful function. The following factors will be used in determining whether an MBE or WBE trucker/hauler is performing a commercially useful function:

- (1) The MBE or WBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting MBE or WBE objectives.
- (2) The MBE or WBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

#### D. Substitution

When an MBE/WBE substitution is requested, the contractor will submit a letter explaining why substitution is needed. The letter will be forwarded to the assigned contract compliance officer for review and approval. The letter must include the names and addresses are shown, dollar values are included, and reason for the request. The impacted MBE/WBE subcontractor will also be given the opportunity to submit a written objection to the proposed substitution. If the Compliance Officer agrees to the substitution, the contractor will notify, in writing, the DBE/WBE subcontractor regarding the proposed substitution.

##### 1. Good Faith Efforts when an MBE/WBE is Replaced on a Contract

DC Water will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor is required to notify DC Water immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the prime contractor will be required to obtain prior approval from DC Water of the substitute DBE and to provide copies of new or amended subcontracts, and documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, DC Water's Compliance Office may issue an order stopping all or part of payment until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a stop work order or termination for default proceeding.

#### E. Payments to Subcontractors

Pursuant to 40 CFR Part 33.302(a), DC Water will require prime contractors to pay subcontractors for satisfactory performance no more than 30 days from the prime contractors' receipt of payment from DC Water.

#### F. Reporting

DC Water will implement a procedure for monitoring contractor compliance with MBE/WBE requirements and will submit utilization reports to the EPA as required by 40 CFR Part 33.502. The CEO will submit an annual report on results to the Board of Directors.

#### IV. DC WATER COMPLIANCE

DC Water will monitor contractor compliance with federal standards, affirmative action and equal opportunity programs including but not limited to those administered by the U.S Department of Labor, Office of Federal Contract Compliance Programs.

DC Water will ensure that contractors fully comply with all elements of the certified firm participation plans offered by such contractors in response to DC Water solicitations. Compliance will be monitored and enforced using existing DC Water standard operating procedures.

#### V. DC WATER OUTREACH EFFORTS

To (1) encourage competition for all potential vendors and contractors, (2) share information that certified firms may require to compete for DC Water contracts, and (3) ensure that all potential vendors and contractors have equal opportunity to compete and participate in DC Water's contracting and procurement activities, measures will include, but not be limited to:

- a. Advertisement. In addition to the placement of advertisements as may be currently required by the Procurement Manual, DC Water, as appropriate, may advertise or announce solicitations, share procurement forecasts, etc. in media targeted towards the vendor and contracting community, including those focus on local and small businesses.
- b. Procurement Fair. DC Water will sponsor at least one procurement fair annually, at which:
  - (1) Procurement staff and end-user representatives will be available to potential vendors and contractors to discuss contracting and purchasing opportunities.
  - (2) Selected goods and services capable of being furnished by certified small businesses will be identified.
  - (3) An overview of DC Water's procurement process will be provided.
  - (4) Potential vendors and contractors may market their goods and services to DC Water, its prime contractors and vendors.
  - (5) Procurement forecast data will be shared.
- c. Project-Specific Workshops. For large and specialized projects, workshops will be held with potential prime contractors, vendors, and certified firms to provide information and identify subcontracting and supplier opportunities. In addition, certified firms may market their services to potential prime contractors and vendors.
- d. External Conferences – DC Water may participate in procurement conferences or other related events sponsored by external organizations and agencies to describe DC Water's Capital Improvement Program and history of LBEs, LSBEs, MBEs & WBEs participation.
- e. Prime Contractor Outreach. DC Water may require that similar outreach programs be implemented by prime contractors and vendors.

#### VI. CAPACITY BUILDING ACTIVITIES

To expand the pool of certified firms, DC Water will work with business and economic development agencies and organizations, and the prime contractor community, to implement strategies for building the

capacity of small businesses seeking to expand their performance on DC Water contracts and/or compete for and execute contracts as prime contractors with DC Water. Such efforts will include, but not be limited to:

- a. Collaborating, coordinating, and cooperating with other entities to leverage resources, share best practices and maximize the use of existing resources to assist small businesses working on DC Water contracts.
- b. Facilitating better working relationships between prime contractors and small businesses by creating networking forums and opportunities for knowledge transfer and skill development.
- c. Conducting workshops and trainings on how to do business with DC Water to encourage small firms to bid and submit proposals on DC Water opportunities.
- d. Dividing or reducing the size or scope of solicitations, when economically feasible, to afford LSBEs, DBEs, MBEs and WBEs greater opportunities to compete as prime contractors and vendors and subcontractors.

#### A. Mentor Protégé Program

The DC Water Mentor-Protégé program is designed to foster a more competitive environment by building a broader base of certified firms able to perform work on DC Water projects (including designing and engineering). The program encourages private-sector relationships and expands DC Water's efforts to identify and respond to the developmental needs of small and disadvantaged businesses.

The Program's immediate objective is to strengthen the long-term stability of certified firms by focusing the resources on those critical business skills and assets that contractors require to compete successfully in the open market. The Program's goals are to:

- ✓ Enhance the business skills of certified firms;
- ✓ Broaden the base of the certified firms' design, engineering and construction activity; and
- ✓ Build long-term stability of certified firms; and
- ✓ Assist in overcoming the following common barriers for certified firms:
  - Inability to accommodate size or volume of work;
  - Inability to secure adequate financing; and
  - Inability to secure adequate bonding.

Involving larger and more established firms in the development of growing certified firms is crucial to the success of the Mentor-Protégé Program. DC Water is committed to fostering a climate that allows certified firms to benefit from the knowledge and experience of the larger and more established business community.

A Mentor-Protégé relationship may be recommended to firms as part of their business development plan if it is determined through an in-depth business assessment that the firm's developmental goals would greatly benefit from the relationship.

#### Definitions

1. **Mentor** – Generally, a mentor is defined as an entity who guides another to a greater success. An experienced, large and more established firm willing to advise or train a small DBE firm.
2. **Protégé** – A small DBE firm that is guided and supported by a large and more experienced firm.

- 3. Mentor-Protégé** – Two-year partnership involving existing businesses that agree to work together to address matters necessary to help enhance the Protégé's success.

1. Roles & Responsibilities

**DC Water**

DC Water is the sponsor/program administrator. DC Water's duties include:

- Advertising and promoting the program;
- Organizing related business events;
- Collecting enrollment information from potential Protégés;
- Informing and reminding Mentors and Protégés of their roles and responsibilities;
- Collecting status reports;
- Maintaining program records; and
- Evaluating the progress of the Mentors' and Protégés' partnership through the submission of progress reports. These reports will allow DC Water to monitor the Mentor-Protégé relationship and the achievement of the goals identified in the Mentor-Protégé Developmental Action Plans.

**Mentors**

The quality of the Mentor is the key to the success of any Mentor-Protégé program. Mentors will represent well-established firms, who have the knowledge and experience to help certified firms refine and implement sound operating plans.

The Mentor firm will be required to meet with the Protégé on a regular basis. Mentors should train their Protégés to accomplish the following:

- Set targets for improvement;
- Set time table for meeting those targets;
- Assist with Protégé's business strategies;
- Assist in evaluating the outcomes;
- Assist in development of the Protégé's Business Plan;
- Regularly review their Protégé's business and action plans; and
- Monitor their Protégés' key business indicators, including their cash flow, work in progress and recent bids.

**PROTÉGÉ**

The Protégé is a firm that has been in business a minimum of one year and has demonstrated reasonable business acumen. The Protégé's responsibilities include, but are not limited to:

- Identify operational weaknesses;
- Attend meetings scheduled by Mentors;
- Provide Mentor with company's business profile (accomplishments, certifications, current work-in-progress, current capacity and location);
- Make every reasonable effort to implement the business decisions that the meetings produce; and
- Take the initiative to request whatever additional assistance they may need to address significant business issues.

2. General Guidelines

- a. Prime Contractors may develop programs with eligible protégés and provide appropriate developmental assistance to enhance the capabilities of protégés to perform as contractors and/or subcontractors.
- b. Protégés may participate as subcontractors under the mentor's contract with DC Water.

- c. Mentors and protégés are solely responsible for finding their counterpart(s). Therefore, DC Water strongly encourages firms to explore existing business relationships to establish a Mentor-Protégé relationship.
- d. Mentor-Protégé agreements with certified firms can be used to satisfy good faith effort requirements.
- e. Mentor-Protégé arrangements should be up to twenty-four months.
- f. DC Water reserves the right to perform site visits and request periodic reports where Mentor-Protégé activity is performed.

### 3. Mentor-Protégé Process

Firms interested in entering into a Mentor-Protégé relationship should provide written documentation of their arrangement to the DC Water. This will provide DC Water the opportunity to evaluate the nature and extent of the technical, managerial, and traditional subcontracting support involved in the Mentor-Protégé relationship.

The Mentor-Protégé arrangement should contain:

- a. Name, address, phone, and email of the mentor and protégé firms and a point of contact within both firms who will oversee the arrangement.
- b. A description of the type of developmental program that will be provided by the mentor to the protégé, including a schedule of performance, and criteria for evaluation of the protégé's developmental success.
- c. Program participation term.
- d. Other terms and conditions, as appropriate.
- e. Procedures for the mentor's voluntary withdrawal from the program including notification of the protégé and DC Water. The mentor should provide at least 30 days' written notice to DC Water before withdrawing from the program.

DC Water will review the Mentor-Protégé arrangement no later than 30 days after receipt. Following DC Water's acceptance, the mentor may implement the developmental assistance program.

### 4. Measurement of Program Success

If the Mentor-Protégé Program is successful, Protégés will achieve measurable success against a sound business plan. The Program expects Protégés to demonstrate continuous improvement -- from quarter to quarter and from year to year -- in the following areas:

- Capital base, including:
  - Working capital;
  - Depreciated value of equipment owned or leased;
  - Payroll;
  - Material expensed;
  - Overhead expensed;
  - Net profit;
  - Available credit;
- Bonding limits, per job and in the aggregate;
- Value of current and future work;
- Success in getting profitable work outside any government or other procurement program for small, minority, women or disadvantaged business enterprises; and
- Retention of reliable and productive employees.

## VII. BUSINESS DEVELOPMENT PLAN LIAISON

The program objectives of this Business Development Plan are implemented and monitored by a contract compliance and development team, under the direction of the Director of Compliance and Development, who is also designated as the Business Development Plan Liaison.

The Liaison has direct, independent access to DC Water's CEO concerning certified firm program matters.

## VIII. GLOSSARY

A. **Commercially Useful Function:** For the purposes of the DC Water DBE Program, a firm performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a firm is performing a commercially useful function, DC Water will evaluate:

- the amount of work subcontracted,
- industry practices,
- whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and
- the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE/WOSB participation (Pass-Through).

(3) If a firm does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the firm subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, DC Water will presume that it is not performing a commercially useful function.

(4) When a DBE/WOSB is presumed not to be performing a commercially useful function, the DBE/WOSB may present evidence to rebut this presumption.

**B. Disadvantaged Business Enterprise or DBE: (40 CFR Part 33.103)**

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.

C. **Fair Share Objective (40 CFR Part 33.103)**– For the purposes of Federally assisted projects, A fair share objective is a goal based on the capacity and availability of qualified, certified MBEs and WBEs in the relevant geographic market for the grant recipient in the procurement categories of construction, equipment, services, and supplies compared to the number of all qualified entities in the same market for the same procurement categories.

- A fair share objective is not a quota.



- A recipient cannot be penalized for not meeting its fair share objectives.
  - Once negotiated, fair share objectives remain in place for three years.
- D. **Local Business Enterprise (LBE)** – a local business enterprise as certified by the District of Columbia or a user jurisdiction.
- E. **Local Small Business Enterprise (LSBE)** - a local small business enterprise as certified by the District of Columbia or a user jurisdiction.
- F. **Minority Business Enterprise (MBE) (40 CFR Part 33.103)** – for the purpose of the federal mandated program and fair share objectives, *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).
- G. **Small Business Enterprise** – a business entity, including its affiliates, that is independently owned and operated, not dominant in the field of operations in which it is bidding on government contracts, and qualified as a small business under the criteria and size standard set forth at 13 CFR Part 121.
- H. **Small Business Enterprise** - for the purpose of the DC Water LBE and LSBE Program – a small business enterprise as certified by the District of Columbia or user jurisdiction.
- I. **Socially Disadvantaged Individual** - any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.
- (1) Any individual who a certifying authority finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group.
  - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
    - (i) "Black Americans," (ii) "Hispanic Americans," (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians; (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong; (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; (vi) Women; (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
  - (3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

J. **User Jurisdictions** – consist of the following:

- District of Columbia
- Fairfax County, Virginia
- Loudoun County, Virginia
- Montgomery County, Maryland
- Prince George's County, Maryland

K. **Woman-Owned Business Enterprise (WBE) (40 CFR Part 33.103)** – For the purpose of the federal mandated program and fair share objectives, a business concern which is at least 51% owned or controlled by women. 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.

L. **Women-Owned Small Business (WOSB)** is a small business concern that is at least 51 percent directly and unconditionally owned and controlled by one or more women who are citizens (born or naturalized) of the United States.