



**SMWBE  
STATE REVOLVING FUND  
PROGRAM GUIDANCE DOCUMENT**

**FOR THE UTILIZATION OF  
SMALL, MINORITY & WOMEN-OWNED  
BUSINESSES IN PROCUREMENT**

## TABLE OF CONTENTS

### I. GENERAL INFORMATION

- A. Background
- B. EPA Policy
- C. Applicability
- D. Guidance Document
- E. Benefits
- F. TWDB Role
- G. Flowchart of Procurement Process

### II. DEFINITIONS

### III. FAIR SHARE POLICY

- A. Fair Share Policy
- B. Fair Share Goals

### IV. GOOD FAITH EFFORT

- A. General
- B. Six Affirmative Steps
- C. Professional Service/Other Contracts
- D. Contractor Selection
- E. Documentation
  - Financial Application Phase
  - Subsequent Phases
  - SMWBE Forms
  - Tips for Achieving a Good Faith Effort in Procurement

### V. AFFIRMATIVE STEPS OUTREACH PROGRAM

- A. Affirmative Step One: Compile Solicitation Lists
- B. Affirmative Step Two: Solicit Contractors
- C. Affirmative Step Three: Reduce Contract Size
- D. Affirmative Step Four: Establish Delivery Schedules
- E. Affirmative Step Five: Use Government Sources to Identify
- F. Affirmative Step Six: Monitor Prime Contractor's GFE

### VI. AUTHORITY

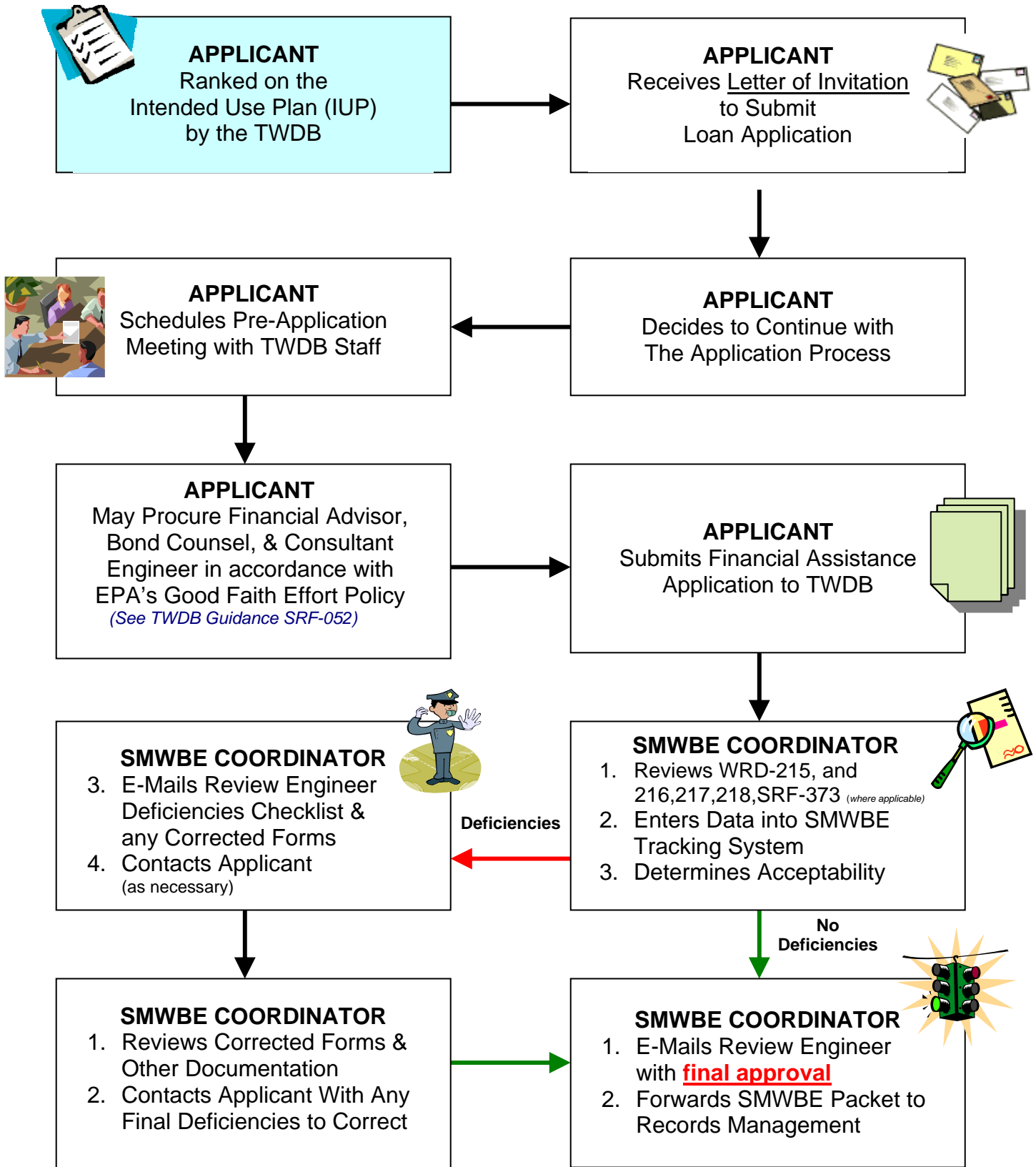
- A. Federal Laws, Executive Orders and Federal Regulations
- B. State Laws
- C. TWDB Rules

## I. GENERAL INFORMATION

- A. **Background** - The Texas Water Development Board (TWDB) receives grants from the Environmental Protection Agency (EPA) to provide low-interest loans to eligible political subdivisions. As a direct result of the United States Supreme Court's decision in *Adarand Constructors, Inc. v. Peña* 115 S. Ct. 2097 (1995), the EPA established new policies governing Small, Minority and Women-Owned Business Enterprises (SMWBE). These new policies are included in the Grants and Operating Agreements between the EPA and TWDB, and apply to all recipients of financial assistance.
- B. **EPA Policy** - EPA's policy (policy) requires recipients of its financial assistance to establish *Fair Share Goals* (goals) for awarding contracts and procuring goods and services from SMWBE's in the construction, supplies, equipment, and services procurement categories. The policy is meant to ensure that SMWBE's have the opportunity to participate in the procurement process, for all phases of the project. It is important to note that although the policy includes *small* (SBE) and *rural area* (SBRA) business enterprises, EPA is only statutorily required to collect data and enforce fair share goal objectives for Minority and Women-Owned business enterprises. TWDB will continue to collect information on SBE and SBRA participation, but those contract awards will not count towards the MBE and WBE goals.
- C. **Applicability** - EPA's policy applies to all procurements made after May 8, 1998, for the Texas Water Development Board (TWDB) Drinking Water State Revolving Fund program (DWSRF), Tier III Clean Water State Revolving Fund program (CWSRF) and Colonia Wastewater Treatment Assistance Program (CWTAP). TWDB programs not affected by this policy are: Water Quality Enhancement (WQE), Water Supply Account (WSA), State Participation, Agricultural Loans and Grants, Tier II Clean Water State Revolving Fund program (CWSRF) and Economically Distressed Areas Program (EDAP).
- D. **Guidance Document** - The intent of the SMWBE guidance document is to assist *applicants* and *contractors* comply with EPA's policy regarding SMWBE's. It is based, in part, on publications, training manuals and other guidance documents developed by EPA to implement their policies published in 40 CFR Parts 30, 31, and 35. The guide also ensures consistency with the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña* 115 S. Ct. 2097 (1995).
- E. **Benefits** - The Affirmative Steps Outreach Program is designed to benefit both recipients of EPA funds and the business community. Applicants can receive lower interest rates on loans in comparison to those available on the open-market, as well as having access to a greater pool of potential contractors to bid on their projects. This increased competition could have the affect of lowering overall project costs, thus, lessening the repayment burden on the Applicant.
- F. **TWDB Role** - The TWDB strives to provide all the necessary technical assistance needed to both applicants and prime contractors throughout all phases of the project. This can include reviewing draft newspaper advertisements, Request for Qualifications (RFQ), and Information for Bids (IFB) to ensure SMWBE components are included; and scheduling pre-application, project management, pre-bid and pre-construction conferences upon request.

**G. Flowchart of SMWBE Document Review**

(Note: CWTAP funding does not have IUP, but must comply with EPA's Fair Share Policy)



## II. DEFINITIONS

For the purpose of this guide, the following definitions shall apply:

- ◆ **Applicant** - Eligible political subdivision or privately-owned water system applying for financial assistance from the TWDB.
- ◆ **Construction** - Any contract or agreement to provide the building, erection, alteration, remodeling, improvement or extension of a TWDB-funded project.
- ◆ **Equipment** - Tangible, nonexpendable personal property having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit.
- ◆ **Grantee** - Direct recipients of EPA funds through cooperative grant.
- ◆ **Minority Business Enterprise (MBE)** - A business concern which, 1) is certified as socially and economically disadvantaged by the Small Business Administration (SBA), or; 2) is certified as a minority business enterprise by a State or Federal agency, or; 3) is independent and at least 51 percent-owned and controlled by minority group member(s), or; 4) is a Historically Black College or University (HBCU's).  
*(Minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or other groups whose members have been determined to be disadvantaged by the Small Business Act or by the Secretary of Commerce under Executive Order 11625, §5.)*
- ◆ **Prime Contractors** - A business concern that enters into written agreements directly with the Applicant for construction, supplies, equipment and services.
- ◆ **Recipients** - Eligible political subdivisions or privately-owned water systems, who receive financial assistance from the TWDB, and/or prime contractors procured by political subdivisions or privately-owned water systems receiving financial assistance from the TWDB.
- ◆ **Services** - A contractor's time and effort (incl. consultants), which do not involve the delivery of a specific end-item, other than documents (i.e. reports, design drawings, specifications, etc.).
- ◆ **Small Business Enterprise (SBE)** - A small business concern, including any affiliate that is independently owned and operated, but not dominant in the field in which they operate. Must also be officially qualified as an SBE by the Small Business Administration (SBA), which uses a numerical definition called "Size Standard" that is almost always stated in either number of employees or average annual receipts. (See Table 1)
- ◆ **Small Business in a Rural Area (SBRA)** - A small business concern that is located and conducts its principal operations in a rural area/non-metropolitan county (as defined by the SBA).
- ◆ **Subcontractors** - A business concern that enters into written agreements directly with the Prime Contractor for construction, supplies, equipment and services.
- ◆ **Supplies** - All tangible personal property other than equipment.
- ◆ **Women Business Enterprise (WBE)** - A business concern which, 1) is certified as economically and socially disadvantaged by the SBA, and; (2) (a) is at least 51 percent owned by one or more women, or in the case of a publicly-owned businesses, at least 51 percent of the stock is owned by one or more women, and; (b) whose daily business operations are managed and directed by one or more of the women owners.

### III. FAIR SHARE POLICY

- A. **Fair Share Policy** - It is EPA's policy that recipients of EPA financial assistance through grants, cooperative agreements and loans put forth a good faith effort to identify, solicit and if possible, award a fair share of contracts/procurements to small, minority and women-owned businesses. This policy applies to all contracts/procurements for construction, supplies, equipment and services. In accordance with these guidelines, the TWDB has established and presently administers the SMWBE program, to promote SMWBE participation for all applicable program projects.
- B. **Fair Share Goals** - The goals shown below were developed using data from the 1997 United States Economic Census, which determined the availability of small, minority and women-owned businesses throughout the State. The goals are applied to individual project contracts and procurements, which then determines the *maximum potential* procurement opportunities (in dollars) that are available to be awarded to MBE's and WBE's in each of the applicable procurement categories. It is important to note that the goals are not *achievement standards* or *quotas*, nor is achieving the goals mandatory. However, applicants and prime contractors (including minority and women-owned businesses) are required to adequately demonstrate that a good faith effort was made to achieve the goals using EPA's six affirmative steps. The fair share goals are negotiated by individual states, and are then presented to EPA for approval.

**The current EPA-approved fair share goals for the State of Texas are as follows:**

Procurement Category	MBE Goal Percentage (%)	WBE Goal Percentage (%)
Construction	34%	8%
Supplies	18%	29%
Equipment	13%	13%
Services	22%	26%

## IV. GOOD FAITH EFFORT

- A. **General** - To ensure compliance with the EPA's Good Faith Effort Policy and Affirmative Steps Outreach Program, the TWDB recommends that all applicants review their own procurement policies and procedures to see if/how SMWBE's are addressed. For applicants that may have *outdated* or *unwritten* procurement procedures, the six affirmative steps outlined below, provide an excellent starting point for updating and/or developing written procurement procedures to address SMWBE's.
- B. **Six Affirmative Steps**
- (1) *Include* qualified SMWBE's on solicitation lists;
  - (2) *Solicit* potential SMWBE's, whenever they are potential sources;
  - (3) *Reduce* contract size/quantities, when economically feasible, to permit maximum participation of SBE's SMWBE's;
  - (4) *Establish* delivery schedules to encourage participation by SMWBE's;
  - (5) *Use* the services and assistance of the SBA, the Minority Business Development Agency, the U.S. Department of Commerce, as appropriate;
  - (6) *Require* Prime Contractor's to follow steps 1-5 when awarding subcontracts or sub-agreements.
- C. **Professional Service/Other Contracts** - As part of the *application* phase, applicants typically enter into prime contracts for professional services such as Financial Advisor, Bond Counsel, and Consultant Engineer. In addition to following the Six Affirmative Steps, the Applicant must also procure professional services in accordance with *Title 10, Chapter 2254 of the Texas Government Code (Professional Services Procurement Act)* and *Title 40 Code of Federal Regulations, Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments)*.
- D. **Contractor Selection** - Recipients are responsible for establishing their own criteria for awarding contracts and for reviewing RFQ's, IFB's, and other bid documents to determine their validity and acceptability. Although the TWDB does not oversee this aspect of the process, it does recommend that adequate documentation be maintained to show the openness of the selection process and the method used to select the proposal/bid to ensure compliance with EPA's policy.
- E. **Documentation**
- ◆ **Financial Application Phase** - As part of the financial application package, *applicants* must submit documentation certifying an understanding of EPA's good faith effort policy, including the fair share goals and six affirmative steps. This information is documented on TWDB form **WRD-215, APPLICANT AFFIRMATIVE STEPS CERTIFICATION and GOALS**.  
**Note:** It is not uncommon for applicants to procure the services of *Financial Advisor, Bond Counsel, and Consultant Engineer* during the financial application phase. However, they must have been procured in accordance with EPA's good faith effort policy to be funded with federal loan proceeds.
  - ◆ **Subsequent Project Phases** - Once the TWDB approves the loan commitment, applicants may proceed with the planning, design, and construction phases of the project, as directed by the TWDB review/project engineer. For each new procurement or contract award, the applicant (in the procurements of prime contractors) and the prime contractors (in the procurement of subcontractors) must demonstrate their understanding and adherence to EPA's good faith effort policy for all project costs to be funded with federal loan proceeds.

**Texas Water Development Board**  
**Small, Minority, Women-Owned Business Enterprise Program**  
**Tips for Achieving a Good Faith Effort in Procurement**

To assist entities **identify, include, and utilize** qualified Small, Minority, and Women-Owned Business Enterprises (SMWBE), applicants and prime contractors are encouraged to refer to the following list of resources made available on a local, statewide, and national level.

**Resources for identifying SMWBE's:**

- ◆ **Texas Building and Procurement Commission's (TBPC) Centralized Master Bidders List (CMBL) & Historically Underutilized Business (HUB) Search** - The CMBL & HUB Search is a statewide database managed by the TBPC. This database contains contact information on all vendors registered to do business with the State, including TBPC-certified HUB vendors. The CMBL & HUB search is an online system available to the public free of charge.  
<http://www.tbpc.state.tx.us/cmb/cmbhub.html>
- ◆ **Texas Department of Transportation - Disadvantaged Business Enterprise Directory**  
<http://www.dot.state.tx.us/business/tucpinfo.htm>
- ◆ **The City of Houston - Minority, Women-Owned, and Disadvantaged Business Directory**  
[http://houston.mwdbe.com/FrontEnd/VendorSearchPublic.asp?TN=Houston\\_Diversity](http://houston.mwdbe.com/FrontEnd/VendorSearchPublic.asp?TN=Houston_Diversity)
- ◆ **The City of Austin - Minority Vendor List**  
[http://www.ci.austin.tx.us/purchase/pu\\_vendor\\_intro.htm](http://www.ci.austin.tx.us/purchase/pu_vendor_intro.htm)
- ◆ **Small Business Administration's-Dynamic Small Business Search** - SBA-DSBA is an Internet-based system that allows applicants and prime contractors to search for small, minority and women-owned businesses in their area.  
[http://dsbs.sba.gov/dsbs/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm)
- ◆ **Other Minority & Women Business Organizations that you can contact directly to obtain a list of qualified vendors for your procurement opportunity:**

<b>American Indian Chamber of Commerce of Texas</b>	<b>Texas Association of Historically Underutilized Businesses</b>
<p><a href="http://www.aicct.com">Website: www.aicct.com</a>  <b>Contact:</b> Diana Woodward  <b>Email:</b> <a href="mailto:dwoodward@aicct.com">dwoodward@aicct.com</a>  <b>Phone:</b> 817-429-2323  <b>Fax:</b> 817-451-3575</p>	<p><a href="http://www.texashubs.org">Website: www.texashubs.org</a>  <b>Contact:</b> Roy Mata  <b>Email:</b> <a href="mailto:rmata@tgsaustin.com">rmata@tgsaustin.com</a>,  <a href="mailto:info@texashubs.org">info@texashubs.org</a>  <b>Phone:</b> 512-220-4293  <b>Fax:</b> 512-288-9121</p>
<b>Central &amp; South Texas Minority Business Council</b>	<b>Women's Business Council – Southwest</b>
<p><a href="http://www.cstmdbc.org">Website: www.cstmdbc.org</a>  <b>Contact:</b> Name: Jennifer Mort  <b>Email:</b> <a href="mailto:jennifer@sdtmbc.com">jennifer@sdtmbc.com</a>, <a href="mailto:eva@cstmdbc.com">eva@cstmdbc.com</a>  <b>Phone:</b> 210-525-7925, 512-386-8766</p>	<p><a href="http://www.wbcsouthwest.org">Website: www.wbcsouthwest.org</a>  <b>Contact:</b> Emilia Menthe, Erica Williams  <b>Email:</b> <a href="mailto:ementhe@wbcsouthwest.org">ementhe@wbcsouthwest.org</a>,  <a href="mailto:ewilliams@wbcsouthwest.org">ewilliams@wbcsouthwest.org</a>  <b>Phone:</b> 817-299-0566</p>
<b>Dallas/Fort Worth Minority Business Development Council</b>	<b>Women Contractors Association</b>
<p><a href="http://www.dfwmbdc.com">Website: www.dfwmbdc.com</a>  <b>Contact:</b> Andrew Nash  <b>Email:</b> <a href="mailto:business@dfwmbdc.com">business@dfwmbdc.com</a>  <b>Phone:</b> 214-630-0747  <b>Fax:</b> 214-637-2241</p>	<p><a href="http://www.womencontractors.org/">Website: http://www.womencontractors.org/</a>  <b>Contact:</b> Josena Arquieta  <b>Email:</b> <a href="mailto:jarquieta@womencontractors.org">jarquieta@womencontractors.org</a>  <b>Phone:</b> 713-807-9977  <b>Fax:</b> 713-807-9917</p>



**Options for announcing your solicitation:**

◆ **Direct Communication** - Contacting potential bidders by direct communication can include but are not limited to correspondence by letter, facsimile, telephone, or email. Applicants and prime contractors are required to provide copies of outreach letters, mailing lists, telephone, fax, and email tracking logs.

◆ **Small Business Administration's (SBA) Sub-Net** - *Sub-Net* is an Internet-based system that allows applicants and prime contractors to post their procurement opportunities online. Access to the database is free to government agencies and contractors, and is an excellent resource for soliciting SMWBE's for your project.

The Sub-Net database can be accessed at: <http://web.sba.gov/subnet>

◆ **Newspaper Advertisements** - The posting of applicable project procurement opportunities should be done in accordance with the notice requirements of state law on competitive bidding, where applicable. There are specific laws governing each type of entity. For example, two important provisions of state law governing **municipalities** require:

1. The notice should be published once a week for two consecutive weeks in a newspaper published in the municipality. If no newspaper is published in the municipality, the notice must be posted at the city hall for 14 days before the date set to publicly open the bids and read them aloud;
2. The date of the first publication should be BEFORE the 14<sup>th</sup> day of the date set to publicly open the bids.

**\*\*\* Please consult your legal counsel for specific laws governing your entity. \*\*\***

**Pertinent language that needs to appear within the text of the solicitation includes:**

A. This contract is contingent upon release of funds from the Texas Water Development Board (TWDB).

B. Any contract or contracts awarded under this Invitation for Bid (IFB) or Request for Qualifications (RFQ) are expected to be funded in part by a loan from the TWDB. Neither the State of Texas nor any of its departments, agencies, or employees are or will be a party to this IFB, RFQ, or any resulting contract.

C. This contract is subject to the Environmental Protection Agency's (EPA) "fair share policy", which includes EPA-approved "fair share goals" for Minority Business Enterprise (MBE) & Women Business Enterprise (WBE) firms in the Construction, Supplies, Equipment, and Services procurement categories. EPA's policy requires that applicants and prime contractors make a good faith effort to award a fair share of contracts, subcontracts, and procurements to SMWBE's. Although EPA's policy does not mandate that the fair share goals be achieved, it does require applicants and prime contractors to demonstrate us of the six affirmative steps. The current fair share goals for the State of Texas are as follows:

CATEGORY	MBE	WBE
CONSTRUCTION	34.0%	8.0%
SUPPLIES	18.0%	29.0%
EQUIPMENT	13.0%	13.0%
SERVICES	22.0%	26.0%

D. Equal Opportunity in Employment - All qualified Applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap or national origin. Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60. Small, minority, and women-owned business enterprises are encouraged to respond.

A complete version of TWDB document, "SMWBE State Revolving Fund Program Guidance Document for the Utilization of Small, Minority, and Women-Owned Business Enterprises in Procurement" is available online at: [http://www.twdb.state.tx.us/publications/forms\\_manuals/SRF052.rf](http://www.twdb.state.tx.us/publications/forms_manuals/SRF052.rf)

## V. AFFIRMATIVE STEPS OUTREACH PROGRAM

- A. Affirmative Step **One**: Include qualified SMWBE's on solicitation lists  
See "*Tips for Achieving a Good Faith Effort in Procurement*" on previous page.
- B. Affirmative Step **Two**: Solicit potential SMWBE's, whenever they are potential sources
- ◆ **DIRECT COMMUNICATION** - Use of *direct communication* as a means to solicit potential contractors can include contact by certified letter, facsimile, e-mail and by telephone. Direct communication implies that a contractor solicitation list has been established; this list must be provided as backup documentation to the WRD-216 form when submitted.
  - ◆ **INDIRECT COMMUNICATION** - Use of indirect communication as a means to solicit potential contractors can include advertising in one or more local, regional or statewide newspapers, trade association publications, minority media outlets, Internet or other website listings, and/or by notifying women and minority business organizations and chambers of commerce of these procurement opportunities. Newspaper advertisements must run in accordance with applicable purchasing guidelines and must include a statement encouraging the participation of minorities, women and small businesses submitting an RFQ and/or bid.
- C. Affirmative Step **Three**: Reduce contract size/quantities, when economically feasible, to permit maximum participation of SBE's SMWBE's
- Reducing contract size increases the opportunity for SMWBE participation by dividing the work into smaller increments that may be more favorable to smaller businesses. An optimum time to consider reducing contract size is during the *project design phase*. Methods for reducing contract size could include, but are not limited to: reviewing the project for opportunities to stage work; dividing multiple-site work; dividing work by task; limiting "brand name requirements"; and soliciting multiple bid items.
- D. Affirmative Step **Four**: Establish Delivery Schedules to Encourage Participation
- Delivery schedules can sometimes determine whether a firm will be able to participate in the procurement process. Short delivery schedules often favor larger firms that have more staff and more available resources to complete big projects in a short period of time. Advanced planning and adequate project management can allow for reasonable delivery schedules, lengthening response time to receive bids and/or proposals, and can even increase competition, which can lead to reduced cost to the applicant.
- E. Affirmative Step **Five**: Use the services and assistance of the SBA, the Minority Business Development Agency, and the U.S. Department of Commerce, as appropriate
- The SBA and the Department of Commerce (DOC) Minority Business Development Agency (MBDA) both manage outreach programs to assist SMWBE's business increase their procurement opportunities. The SBA assists small businesses in the development of business plans, financing, and education; applicants are encouraged to educate contractors on the services available to them through these government organizations. See Affirmative Step One for web links to those agencies.
- F. Affirmative Step **Six**: Require all Prime contractors to follow steps 1-5 when awarding subcontracts/sub-agreements

Prime Contractors are required to follow steps 1-5 when awarding subcontracts/sub-agreements. They are also required to include the applicable "fair share objectives" in all project bid documents when soliciting for subcontracting opportunities. Including this information in the bid document/RFP ensures the potential bidder's awareness of the requirement and notification to comply. Any contract or subcontract awarded without regard to the "fair share objectives" can be considered ineligible for loan funding by the TWDB.

## VI. Authority

- A. Federal Laws, Executive Orders and Federal Regulations
1. Public Law 95-507 - The Amendments to the Small Business Act.
    - a.) Establishes the Office of Small and Disadvantaged Business Utilization in every Agency having procurement powers.
    - b.) Establishes the 8(a) program.
    - c.) Establishes Preferential Procurement Goals for participation by small businesses, small disadvantaged firms, 8(a) and small women- owned concerns in Federal contracting programs. The goals are forwarded to the Small Business Administration on an annual fiscal year basis for approval or negotiation.
  2. Public Law 100-533 - Women's Business Ownership Act of 1988. Increases the advocacy Role of Federal Agencies to further promote and advance WBE utilization in Federal contracting and subcontracting activities.
  3. Public Law 100-590 - Small Business Administration Reauthorization and Amendment Act of 1988. Enacted on November 3, 1988. It requires Federal agencies with substantial procurement or grant-making authority to establish rural area business enterprise development plans. The Administrator of the Small Business Administration has identified EPA as a Federal agency having substantial procurement and grant-making authority. EPA has established a Rural Area Business Enterprise Development (RABED) Plan covering both financial assistance and direct procurement.
  4. Public Law 101-507 - EPA Appropriation of Act of 1991. The 1991 Appropriations Act signed into law on November 5, 1990. "The Administrator of the Environmental Protection Agency shall, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of Section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)), including historically black colleges and universities. For purpose of this section, economically and socially disadvantaged individuals shall be deemed to include women..."
  5. Public Law 102-389 - The 1993 Appropriations Act. Enacted on October 6, 1992 changes the language in the Administrative Provisions of PL. 101-507 by adding the word 'hereafter' to the first sentence of the provision which states, "The Administrator of the Environmental Protection Agency shall, hereafter..." The addition of the word "hereafter" makes the language permanent.
  6. OMB Circular A-102. Standards to be used by Federal agencies in establishing procedures for the procurement of supplies, services and construction with Federal assistance funds.
  7. Executive Order 11625. Issued on October 13, 1971. The Order clarified the authority of the Secretary of Commerce to implement policy and to assist minority business enterprises. One of the factors was, "...to coordinate the participation of Federal departments and agencies in an increased minority enterprise effort." As a result of this, the Order required the Secretary of Commerce to, "...Promote the mobilization of activities and resources of State and local governments, businesses and trade associations, universities, foundations, professional organizations and volunteer groups toward the growth of minority business enterprises, and facilitate the coordination efforts of these groups with those of Federal departments and agencies." The Order further requires that

the Secretary, with the participation of other Federal departments and agencies, as appropriate, to develop comprehensive plans and specific program goals; establish regular program monitoring and reporting systems; and evaluate the impact of Federal support in achieving the objectives established by this Order. The Order requires the head of each Federal department or agency to furnish information and reports in a manner prescribed by the Secretary of Commerce. It further stipulates that within the constraints of law and appropriations, Federal departments and agencies shall foster and promote minority business enterprise.

8. Executive Order 12138. Issued on May 18, 1979. The Order directed all Federal agencies to: (1) facilitate, preserve and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system; (2) take affirmative action in support of women's business enterprises; and (3) extend Federal financial assistance to any program or activity...each department or agency empowered to, shall issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of women's business enterprise and to prohibit actions or policies which discriminate against women's business enterprise. Pursuant to Executive Order 12138, the regulation implemented by the agencies shall prescribe sanctions for noncompliance. Sanctions by EPA were set forth in 40 CFR Part 30, Subpart I. In the case of assistance awards to recipients other than State and local governments they are still set forth there. In the case of assistance awards to State and local governments they are set forth in 40 CFR Part 31.43.
9. Executive Order 12432 - Minority Business Development. Issued July 14, 1983. The Order directed all Federal agencies to: (1) develop an MBE plan on an annual basis; (2) establish MBE objectives; (3) identify methods for encouraging prime contractors and grantees to utilize MBEs; (4) build upon programs administered by the Small Business Administration and Minority Business Development Agency; (5) furnish an annual report regarding the accomplishments of their MBE programs; and (6) establish programs to deliver management and technical assistance to MBEs.
10. 40 CFR Part 30. EPA implements its small business, minority business and women-owned business programs for institutions of higher education, hospitals, and other non-profit organizations in 40 CFR Part 30.44(b).
11. 40 CFR Part 31. EPA implements its small business, minority business and women-owned business programs for States, local governments and Indian Tribes through its "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments", 40 CFR Part 31, in 40 CFR 31.36(b) Procurement standards and Sec. 31.36 (e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms ensuring use of six affirmative steps.
12. 40 CFR Part 35, Subpart K. Under the State Revolving Fund Program requirements for the participation of minority and women-owned businesses apply to assistance in an amount equaling the grant. To attain compliance with MBE/WBE requirements, the Regional Administrator or designee will negotiate an annual "fair share" objective with the State for MBE/WBE participation on these SRF-funded activities. A fair share objective should be based on the amount of the capitalization grant award or other State established goals. See 40 CFR 35.3145(d). Ref: [www.epa.gov/authority.htm](http://www.epa.gov/authority.htm)

## B. State Laws

1. Texas Water Code - Chapter 15, Subchapter J. SUBCHAPTER J. FINANCIAL ASSISTANCE FOR WATER POLLUTION CONTROL establishes the state water pollution control revolving fund to be administered by the board under this subchapter and rules adopted by the board
2. PROFESSIONAL SERVICES PROCUREMENT ACT (CHAPTER 2254. SUBCHAPTER A.)

Added by Acts 1993, 73rd Leg., Chi. 268, Sec. 1, eff. Sept. 1, 1993.  
Sec. 2254.002. Definitions.

In this subchapter:

(1) "Governmental entity" means:

- (A) a state agency or department;
- (B) a district, authority, county, municipality, or other political subdivision of the state; or
- (C) a publicly owned utility.

(2) "Professional services" means services:

(A) within the scope of the practice, as defined by state law, of:

- (i) accounting;
- (ii) architecture;
- (iii) land surveying;
- (iv) medicine;
- (v) optometry;
- (vi) professional engineering; or
- (vii) real estate appraising; or

(B) provided in connection with the professional employment or practice of a person who is licensed as:

- (i) a certified public accountant;
- (ii) an architect;
- (iii) a land surveyor;
- (iv) a physician, including a surgeon;
- (v) an optometrist;
- (vi) a professional engineer; or
- (vii) a state certified or state licensed real estate appraiser.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 244, Sec. 1, eff. Sept. 1, 1997.

Sec. 2254.003. Selection of Provider; Fees.

(a) A governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:

- (1) on the basis of demonstrated competence and qualifications to perform the services; and
- (2) for a fair and reasonable price.

(b) The professional fees under the contract:

- (1) must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and
- (2) may not exceed any maximum provided by law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2254.004. Contract for Professional Services of Architect, Engineer, or Surveyor.

(a) In procuring architectural, engineering, or land surveying services, a governmental entity shall:

- (1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
- (2) then attempt to negotiate with that provider a contract at a fair &

reasonable price.

(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the entity shall:

- (1) formally end negotiations with that provider;
- (2) select the next most highly qualified provider; and
- (3) attempt to negotiate a contract with that provider at a fair & reasonable price.

(c) The entity shall continue the process described in Subsection (b) to select and negotiate with providers until a contract is entered into.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 119, Sec. 1, eff. Sept. 1, 1997.

Sec. 2254.005. Void Contract. A contract entered into or an arrangement made in violation of this subchapter is void as against public policy.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

3. Local Government Code

- A. CHAPTER 252. PURCHASING AND CONTRACTING AUTHORITY OF MUNICIPALITIES
- B. CHAPTER 2051. GOVERNMENT DOCUMENTS, PUBLICATIONS, AND NOTICES
- C. CHAPTER 2251. PAYMENT FOR GOODS AND SERVICES
- D. CHAPTER 262. PURCHASING AND CONTRACTING AUTHORITY OF COUNTIES

C. TWDB Rules

1. Chapter 363, Financial Assistance Programs
2. Chapter 371, Drinking Water State Revolving Fund
3. Chapter 375, State Water Pollution Control Fund