

**McHUGH**

# GUIDELINES FOR WORKING WITH DISADVANTAGED, MINORITY AND WOMEN BUSINESS ENTERPRISES (D/M/WBES)



**James McHugh Construction Co.**  
1737 S. Michigan Avenue  
Chicago, Illinois 60616  
[www.mchughconstruction.com](http://www.mchughconstruction.com)

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## **Guidelines for Working with Disadvantaged, Minority, and Woman Business Enterprises (D/M/WBEs) April 30, 2014**

### **Introduction**

McHugh is proud of its excellent record of promoting and doing business with qualified disadvantaged business enterprises (DBEs), minority business enterprises (MBEs) and women business enterprises (WBEs). We are committed to providing a level playing field and equal access to DBEs, MBEs and WBEs. Our policy is to make good faith efforts to comply with the applicable DBE, MBE and WBE participation goals on our government contracts by providing available subcontracting, supplier and joint venture opportunities to local, certified companies that perform a commercially useful function.

McHugh holds contracts with many government agencies, performing work on federal, state and local contracts. D/M/WBE rules and regulations vary from government agency to government agency, and each agency's interpretation of the same rules often differs. Therefore, it is imperative that McHugh conduct a thorough review of bid specifications, special conditions and contract language as well as applicable regulations, statutes, codes, ordinances and rules each time McHugh bids on a government contract.

To maintain consistency throughout these Guidelines, all references to D/M/WBE regulations are to the federal DBE regulations found at 49 C.F.R. 26. These regulations were enacted by Congress, are administered by the United States Department of Transportation, and are carried out by state and local transportation agencies which are recipients of certain federal funds.

Since the late 1970s, state and local governments have established programs designed to maximize opportunities for firms owned by minorities and women to compete for and perform contracts. In 1983 Congress enacted the first regulations to assist DBEs in competing for and obtaining federally funded contracts. In 1987 Congress amended these regulations to, among other things, add women to the groups presumed to be disadvantaged. Today, many government agency contracts have D/M/WBE requirements.

### **Purpose**

These Guidelines serve as a practical guide for establishing McHugh's compliance program. These Guidelines have been prepared from McHugh's perspective based on guidance from attorneys versed in this area and McHugh's experience in obtaining and utilizing D/M/WBEs in accordance with federal, state and local government agency program requirements.

The purposes of these guidelines are to:

- Assist the estimating team in preparing a D/M/WBE Utilization Plan prior to bid submittal; and
- Ensure that each D/M/WBE subcontractor performs a commercially useful function (as defined in these Guidelines).

These Guidelines will be updated by McHugh on a regular basis according to new requirements encountered during bidding, changes in standard industry practice and revisions to government rules and regulations. The corporate compliance officer will monitor compliance and assist employees in interpreting these Guidelines and all government agency requirements. Any deviations from these Guidelines must be brought to the immediate attention of the corporate compliance officer.

Violations of this policy shall be subject to discipline according to the progressive discipline policy set forth in the Employee Handbook, which may include, among lesser disciplinary actions, termination of employment.

## **PART I – Identifying and Contracting with D/M/WBE Firms**

### **1.0 D/M/WBE Identification, Solicitation, and Selection**

McHugh will continually identify, solicit and network with D/M/WBEs and will enlist the cooperation of contractor organizations, assist agencies and government agency officials in such efforts.

#### **1.1 Listings of Qualified D/M/WBEs**

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Using databases from various government and assist agencies, McHugh has developed an in-house list of potential D/M/WBEs whose activities are applicable to McHugh’s type of work. Before subcontracting to a D/M/WBE, the capabilities and qualifications of the D/M/DBE should be thoroughly investigated. McHugh’s investigation of a D/M/WBE’s capabilities should include having the D/M/WBE complete the Subcontractor Prequalification Form and verification of its certification as a D/M/WBE.

#### **1.2 D/M/WBE Outreach**

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From time to time and on projects that require specific programs, or if it is deemed appropriate by the corporate compliance officer, a special outreach meeting will be held during preconstruction to award any subcontracts. These outreach programs will be conducted by the project management team working with the corporate compliance officer and the marketing department. Potential D/M/WBEs attending this event will have to complete a Subcontractor Prequalification Form and show that they are certified by the appropriate agency.

#### **1.3 Interaction with Government Agencies**

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Because this document is intended as a general guide, it cannot address every situation McHugh may encounter. Each government agency may interpret or implement the same federal, state and local D/M/WBE rules and regulations differently. To help ensure that McHugh meets a particular government agency’s requirements, the project team and the corporate compliance officer should:

- Know the agency officials responsible for administering the D/M/WBE programs in their project area district and understand the agency officials’ interpretations of the rules and regulations.
- Make good faith efforts to meet individual contract D/M/WBE goals and thoroughly document those efforts in the event McHugh’s participation falls short of the contract goals. See Attachment A (Good Faith Efforts) for additional information.
- Be vigilant during contract performance by monitoring each D/M/WBE’s work. Each D/M/WBE must perform a commercially useful function (which is further explained in Part II). Encourage all team members to vigilantly monitor D/M/WBE performance. Remember that ensuring D/M/WBE compliance is just as important as meeting project schedules.
- In the event McHugh desires to assist D/M/WBEs in any way, determine whether the proposed assistance is appropriate or whether the project manager should seek approval from the appropriate government agency. Remember that rules and regulations vary among government agencies. Refer to Section 4.0 of Part II for additional information regarding D/M/WBE assistance.
- Contact the corporate compliance officer whenever a question arises or help is needed.

## **2.0 Bidding and Preconstruction**

The project executive, chief estimator, senior estimator and corporate compliance officer should review these Guidelines along with the bid documents and agency requirements early in the bidding process.

### **2.1 Identifying D/M/WBEs**

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Currently certified D/M/WBEs should be found in McHugh's in-house list or in the government agency's database or bids may be received from unsolicited D/M/WBEs. Before McHugh can accept a bid from a D/M/WBE, the D/M/WBE should have completed the Subcontractor Prequalification Form and provided the appropriate certification.

The D/M/WBEs scope of work and the Utilization Plan McHugh submits with its bid must comply with these Guidelines. Potential D/M/WBEs should be identified early in the bid process and their potential type of subcontract and scope of work identified. To allow flexibility at bid time, the list of qualified D/M/WBEs should contain more subcontractors than McHugh needs to meet its requirements.

### **2.2 D/M/WBE Scope of Work**

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A specific scope of work for each D/M/WBE must be determined. Each D/M/WBE must perform a commercially useful function and the work to be performed by the D/M/WBE must be the type of work the D/M/WBE is certified to perform.

If the D/M/WBE subcontracts an unusual amount of its work or does not intend to perform the minimum amount required by the government agency's rules and regulations, the contract documents or standard industry practice, the government agency will presume that the D/M/WBE is not performing a commercially useful function.

If the D/M/WBE is a supplier, not a subcontractor, McHugh must take into consideration all rules and regulations of applicable federal, state and local agencies and requirements in the contract documents. For example, if the D/M/WBE is a distributor and not a manufacturer, in most cases McHugh can claim D/M/WBE credit for only 60% for supplies or equipment it purchases from the D/M/WBE. The types of materials or equipment supplied must be specified in the D/M/WBE's certification.

### **2.3 D/M/WBE Utilization Plan**

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Prior to the bid, the estimating team should develop a D/M/WBE Utilization Plan to achieve the D/M/WBE goals or to document that McHugh has made adequate good faith efforts to meet the D/M/WBE goals. This D/M/WBE Utilization Plan should address the following:

- The contract's D/M/WBE goals;
- The work which may be subcontracted and the estimated value of such work;
- An inventory of "traditional" subcontracted items as well as the identification of "new" potential subcontracting opportunities;
- When practical, the division of large (scope or quantity) items into potential smaller subcontracting opportunities;

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- If permitted by the governing agency, D/M/WBE participation by second tier subcontractors;
- Identification of potential material supply contracting opportunities. Determine the allowable D/M/WBE participation for material supply based on the government agency's requirements. For example, the federal DBE regulations allow 100% credit to be awarded for materials or supplies McHugh purchases from a DBE manufacturer and 60% credit to be awarded for materials or supplies McHugh purchases from a DBE regular dealer.

Please be advised that D/M/WBE rules and regulations vary from agency to agency and each agency's interpretation of the same rules often differ. Therefore, it is imperative that McHugh conduct a thorough review of bid specifications, special conditions and contract language as well as applicable regulations, statutes, codes, ordinances and rules each time McHugh bids on a government contract.

- Determine the likely total D/M/WBE participation from all of the above items and compare to the D/M/WBE goals and ensure that the D/M/WBE Utilization Plan meets or exceeds these goals.

A D/M/WBE Utilization Plan will be submitted with the bid. The Utilization Plan must be approved by the project executive, chief estimator and corporate compliance officer prior to submission with the bid.

### **2.4 Project-Specific D/M/WBE Plan**

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As part of the hand-off meeting from the estimators to the project team, the project executive and the chief estimator will provide the project team with the D/M/WBE Plan submitted with the bid. The project team will then review the D/M/WBE plan, these Guidelines and the contract documents to produce a Project-Specific D/M/WBE Plan. The Project-Specific D/M/WBE Plan will be completed at the hand-off meeting by the corporate compliance officer. The project team and all subcontractors must adhere to all components of the Project-Specific D/M/WBE Plan.

A Project-Specific D/M/WBE Plan shall address all applicable items in these Guidelines for each D/M/WBE. It shall also include:

- Schedule D and related Schedule Cs.
- Current certification letters, showing area(s) of specialty, for each D/M/WBE;
- Verification that the certifications match the scope of work of each D/M/WBE;
- Written acceptance from each D/M/WBE of its scope of work and price (not a schedule signed in blank as part of the bid process);
- Copies of any unique requirements that apply to the project.

### **2.5 First and Second Tier D/M/WBE Subcontracts**

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For first tier D/M/WBE subcontracts, the scope of work should be a clearly-defined, specific portion of the overall project for which the D/M/WBE is responsible. In most cases, second tier D/M/WBE subcontracts can be included in McHugh's Utilization Plan; however, McHugh should conduct a thorough review of bid specifications, special conditions and contract language to determine whether second tier subcontracting is permissible. Second tier D/M/WBE subcontracting occurs when a first tier subcontractor commits to subcontract part of its work or to purchase necessary materials from a D/M/WBE subcontractor or supplier. First tier D/M/WBE subcontractors must submit any subcontracting plans to McHugh for review, approval and monitoring. All second tier D/M/WBE subcontracts must

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conform to these Guidelines. Each tier of D/M/WBE subcontractor must perform work that falls under its certified area of specialty and that it is capable of performing.

It is important to remember that the federal DBE regulations limit the amount of work that a D/M/WBE subcontractor can further subcontract: a D/M/WBE does not perform a commercially useful function if it performs less than 30% of the total cost of its contract, or the D/M/WBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice. Remember that state and local transportation agencies may require that D/M/WBEs perform more than 30% of the work.

### **2.6 Quote Documentation**

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When receiving quotes from D/M/WBEs that are, under the particular facts and circumstances, substantially lower than other quotes and/or McHugh's estimate, McHugh should:

- Advise the D/M/WBE that its quote is lower than others received and ask it to verify its estimate. Do not reveal by how much the D/M/WBE's quote is low;
- Contact the D/M/WBE to review the scope of work;
- Check/compare quantities required;
- Ask whether the D/M/WBE has received quotes for the material to be purchased for the subcontracted work; and
- Inquire as to the D/M/WBE's schedule.

If a D/M/WBE quotes multiple items, determine whether the quote can be separated and accepted for each individual item or if the D/M/WBE expects to be awarded all items it quotes. It may be possible to negotiate the use of the D/M/WBE's quote for only those items on which the D/M/WBE's pricing is reasonable and not use the quote for those items where the pricing is unreasonable. Do not use pieces or parts of a quote from the D/M/WBE unless the D/M/WBE has agreed in writing to allow such use.

Do not accept a D/M/WBE quote from any entity other than the D/M/WBE that proposes to perform the work.

Document the reasons for any rejected quotation. If McHugh is unable to meet the goals of the bid and intends to seek a good faith exception, the fact that McHugh would rather perform the work with its own forces is not a legitimate reason for rejection of a D/M/WBE bid.

Include in the subcontract language the full details of the scope of work that is to be performed by the D/M/WBE for the price quoted. Details such as loading and unloading materials, storage of equipment and materials, supervision and inspection of work and all other details should be written into the subcontract.

While it is important to obtain competitive pricing for all work, it is McHugh's policy to not provide the quote from a D/M/WBE to any other subcontractors or suppliers.



### **3.0 Executing D/M/WBE Subcontracts**

McHugh should contact the successful and unsuccessful D/M/WBEs as soon as possible after the bid opening to let them know whether McHugh intends to use them. The scope of subcontracted work and the price should be confirmed in writing for all successful bidders.

#### **3.1 Subcontract Language**

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Include Attachment B (Subcontract Exhibit G: Diversity Plan) in all subcontracts with D/M/WBE firms. The Project Manager must review these Guidelines with the D/M/WBE and advise the D/M/WBE that McHugh expects it to manage, supervise and perform the work in question with its own personnel and resources.

#### **3.2 Bond**

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Determine whether the D/M/WBE will provide a bond and include the bond form.

#### **3.3 Subcontract Execution**

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Complete the subcontract with any necessary revisions or amendments and ensure that the D/M/WBE has copies of all pertinent documents. Submit the completed subcontract documents to the D/M/WBE for execution and establish a date by which McHugh expects to receive an executed subcontract back from the D/M/WBE.

#### **3.4 Meeting D/M/WBE Goals through Second or Multiple Tier Subcontracts**

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McHugh is ultimately responsible for the actions of its D/M/WBE subcontractors and suppliers of all tiers. McHugh should therefore ensure that any subcontract between a first tier D/M/WBE subcontractor and second tier D/M/WBE subcontractor includes Attachment B.

## **PART II – Commercially Useful Function**

All D/M/WBE firms must perform a commercially useful function. One of the elements to determining if a D/M/WBE is performing a commercially useful function is whether its role is consistent with normal industry practice. Is the D/M/WBE performing in the same manner as if it were not a D/M/WBE? The answer should be yes.

A D/M/WBE does not perform a commercially useful function if its role is limited to an extra participant or a "pass-through" for purposes of obtaining D/M/WBE participation.

### **1.0 Purchasing by D/M/WBE**

#### **1.1 Subcontractors**

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For a D/M/WBE subcontractor (furnish and install) to receive credit for supplying materials, the D/M/WBE **must perform all of the following four functions**: (1) negotiate price; (2) determine quality and quantity; (3) order the materials; and (4) pay for the material itself. If the DBE does not perform all of these functions, it has not performed a commercially useful function with respect to obtaining the materials, and the cost of the materials may not be counted toward the DBE goal. Invoices for the material should show the payor as the DBE.

In order to comply with these requirements, the D/M/WBE must negotiate directly with the suppliers. If McHugh has received quotes from suppliers during the bid process, it can provide these quotes to the D/M/WBE; however McHugh cannot deal directly with the suppliers. The scope of purchases required to be made by the D/M/WBE must be clear and well-defined in the subcontract or in a subcontract change order. These purchases must be necessary for the work assigned to the D/M/WBE and the D/M/WBE must install these items.

If the D/M/WBE requests McHugh's assistance in reviewing the scope of work or terms and conditions of the supplier, McHugh may provide a written response and discuss any items with the D/M/WBE that may not comply with the contract documents. If the D/M/WBE formally notifies McHugh that it is having difficulty complying with the subcontract requirements due to suppliers, scope of work, terms and conditions or price, McHugh can attend a joint conference with the D/M/WBE and supplier. The meeting must be properly documented with meeting minutes and any changes to subcontract terms should be documented with a change order to the D/M/WBE.

In no case is McHugh to:

- Utilize a draft purchase order to the D/M/WBE for items to be purchased to define scope or pricing;
- Require McHugh's approval of change orders between the D/M/WBE and supplier; or
- Negotiate price directly with the supplier on behalf of the D/M/WBE.

#### Materials "Red Flags"

Government agencies will likely raise questions if the following events occur:

- Materials for DBE credited work are delivered to McHugh (or another contractor)
- Materials are ordered, billed to, and/or paid by McHugh (or another business)
- Invoices do not indicate that DBE is the customer

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- McHugh's employee is listed as the contact person on invoices
- Materials come from McHugh's stockpiles
- The D/M/WBE only purchases materials while performing little or no work related to those materials.

The following additional rules apply to the credit McHugh may take for a D/M/WBE's work in certain common circumstances. These rules are based on federal DBE regulations and will not apply in every situation. Therefore, it is imperative that McHugh conduct a thorough review of bid specifications, special conditions and contract language as well as applicable regulations, statutes, codes, ordinances and rules for specific provisions regarding the counting of D/M/WBE credit.

- The D/M/WBE must be certified by an entity recognized by the government agency to perform the work for which it is contracted. The materials purchased by the D/M/WBE must be necessary for the installation of the work which McHugh has subcontracted the D/M/WBE to perform.
- Portions of the work that the D/M/WBE further subcontracts to non-D/M/WBEs cannot be counted toward McHugh's D/M/WBE goals.
- Materials and equipment that the D/M/WBE purchases from non-D/M/WBE suppliers can be counted towards the goal provided that the D/M/WBE installs all of the items.
- Equipment that a D/M/WBE leases from non-D/M/WBE suppliers can be counted towards the goal provided that the D/M/WBE utilizes the equipment to install the work.

### 1.2 Suppliers

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The following examples illustrate costs that may be counted toward McHugh's D/M/WBE goals in certain common circumstances. These examples are based on federal DBE regulations and will not apply in every situation. Therefore, McHugh should conduct a thorough review of bid specifications, special conditions and contract language as well as applicable regulations, statutes, codes, ordinances and rules for specific provisions regarding the counting of D/M/WBE credit.

- If the materials or supplies are obtained from a D/M/WBE manufacturer, count 100% of the cost of the materials or supplies toward D/M/WBE goals.
- If the materials or supplies are purchased from a D/M/WBE regular dealer, count 60% of the cost of the materials or supplies toward D/M/WBE goals.
- The work of suppliers that act as brokers or pass-through companies cannot be counted toward D/M/WBE requirements and should never be utilized. If there is a question as to the legitimacy of a certified firm, the corporate compliance officer should be consulted.

The use of suppliers should be reviewed with the project executive in all cases as the requirements vary widely from government agency to government agency. When necessary, the project executive should consult with the corporate compliance officer to discuss D/M/WBE supplier issues.

### 1.3 Leased Equipment

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As a general rule, a D/M/WBE should have access to equipment necessary to perform its work. A D/M/WBE can either own the equipment or it can rent the equipment. If the equipment is rented, the D/M/WBE should have a written rental agreement consistent with standard industry practice. **Under no circumstances can a D/M/WBE rent equipment from McHugh.** In certain limited circumstances, McHugh can allow D/M/WBEs to use McHugh's equipment for performance of the D/M/WBE's work; however, the D/M/WBE cannot pay McHugh or be back charged by McHugh for such use. Additionally, no charges or costs of this equipment can be applied toward McHugh's D/M/WBE goal. For example, on many McHugh projects, the tower crane is utilized for hoisting McHugh's materials and the materials of all subcontractors such as electrical, mechanical, plumbing, fire protection, etc. Regardless of whether non-D/M/WBE subcontractors are charged for use of the crane, D/M/WBE's may not be charged, even for premium costs for hoisting outside regular working hours. If a D/M/WBE will utilize a piece of McHugh's equipment, this utilization should be reflected in the Project-Specific D/M/WBE Plan.

#### Equipment "Red Flags"

Government agencies will likely raise questions if the following events occur:

- The D/M/WBE leases equipment from McHugh.
- The D/M/WBE uses equipment owned by another contractor with no formal lease agreement.
- Equipment signs and markings cover another owner's identity, usually through the use of magnetic signs.

The following examples illustrate costs that may be counted toward McHugh's D/M/WBE goals in certain common circumstances. These examples are based on McHugh's experience performing federally funded contracts and will not apply in every situation. Therefore, McHugh should conduct a thorough review of bid specifications, special conditions and contract language as well as applicable regulations, statutes, codes, ordinances and rules for specific provisions regarding the counting of D/M/WBE credit.

- When utilized in the performance of the contract, equipment leased directly by McHugh from a D/M/WBE certified in leasing that type of equipment can be counted 100% toward the D/M/WBE goal.
- When utilized in the performance of the contract, equipment leased directly by a D/M/WBE from another D/M/WBE certified in the area of specialty of leasing the type of equipment can be counted 100% toward the D/M/WBE goal.
- When utilized in the performance of the contract, equipment leased directly by a D/M/WBE from a non-D/M/WBE can be counted 100% toward the D/M/WBE goal.
- Labor provided to operate leased equipment, whether provided by the D/M/WBE leasing company or a D/M/WBE subcontractor, can also be counted 100% toward the D/M/WBE goal, provided that it complies with Section 2.0 of Part II Labor Guidelines.

### 1.4 Shop Drawings

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Shop drawings and submittals for equipment, materials and supplies that are supplied and installed by D/M/WBE as part of their subcontract work must be processed by the D/M/WBE in accordance with the project submittal requirements.

## **2.0 Labor Guidelines**

### **2.1 Management of Labor**

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The D/M/WBE's labor force must be recruited, hired and managed directly by the D/M/WBE. The D/M/WBE must pay all costs for its labor directly, including but not limited to wages, union benefits, insurance and taxes.

The "sharing of employees" between McHugh and its D/M/WBEs is strictly prohibited. In addition, employees who are or have been on the McHugh or a related company's payroll on the same project that the D/M/WBE has been subcontracted to work cannot be hired by the D/M/WBE on that specific project at any time during the project. Similarly, employees who are or have been on the D/M/WBE's payroll for the project on which the D/M/WBE has been subcontracted to provide labor cannot be hired by McHugh on that specific project. Exceptions may be granted by the corporate compliance officer due to special circumstances on a case-by-case basis. McHugh will not require or request, directly or indirectly, that the D/M/WBE hire any person regardless of whether he was a prior employee of McHugh.

Qualified union tradespersons, including foremen, who are paid on an hourly basis, may only be referred to the D/M/WBE at the D/M/WBE's written request. Such requests may be made by an authorized representative of the D/M/WBE via e-mail using Attachment C (D/M/WBE Union Manpower Request Form). The decision to hire any individual must be solely made by the D/M/WBE without input, feedback or comment by McHugh, unless specifically requested by the D/M/WBE. Under no circumstances will McHugh refer tradespersons to the D/M/WBE who have been on McHugh's payroll on the same project that McHugh has subcontracted with the D/M/WBE.

Consistent with standard industry practice, the D/M/WBE may hire any hourly tradesperson, including foremen, who have previously worked for McHugh on other projects if the person has been laid off by McHugh, is not currently employed by McHugh on any project, and the person is hired directly by the D/M/WBE through its own hiring process. The D/M/WBE is prohibited from recruiting or hiring any employee who is currently working for McHugh on any project.

#### Labor "Red Flags"

Government agencies will likely raise questions if the following events occur:

- DBE employees are being supervised by McHugh or another contractor
- DBE merely performs administrative duties
- DBE provides little or no supervision of work
- DBE supervisor is not an employee of the DBE
- DBE firm/supervisor not aware of the status of the work or performance of the business
- DBE sharing employees with McHugh or other non-DBE contractors

### **2.2 Supervision of Labor**

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All work performed by the D/M/WBE must be scheduled and directly supervised at the project site on a daily basis by the D/M/WBE owner or with a full-time, skilled, knowledgeable labor foreman, superintendent or project manager who is employed by the D/M/WBE. Under no circumstances should McHugh directly supervise the employees of the D/M/WBE. McHugh's primary points of contact and communications with the D/M/WBE for job coordination and quality control must be made to the

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designated on-site supervisor or project manager of the D/M/WBE. Job coordination by McHugh with the D/M/WBE may include communications about the work to be performed on the project, the number of employees required to perform the work and related issues in connection to the performance of the overall project, in accordance with McHugh's standard subcontract agreements. The employees of the D/M/WBE must be recruited and hired by the D/M/WBE, and its actual crew size must be determined by the D/M/WBE.

### Management and Supervision

The DBE must manage the work that has been contracted to its firm. Management includes, but is not limited to:

- Scheduling work operations
- Ordering equipment and materials
- Preparing and submitting certified payrolls
- Hiring and firing employees

### Management and Supervision "Red Flags"

Government agencies will likely raise questions if the following events occur:

- The D/M/WBE merely performs administrative duties
- The D/M/WBE provides little or no supervision of work
- The D/M/WBE's superintendent is not a regular employee
- The D/M/WBE relies on McHugh's or other company's personnel for supervision;
- The D/M/WBE's owner is not aware of the status of the work or the performance of the contract;
- McHugh, as opposed to the D/M/WBE, answers government agency inquiries.

## 2.3 Management of Materials and Equipment

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The D/M/WBE must perform its subcontract agreement with its own resources. All equipment, supplies and materials that are required to be supplied by the D/M/WBE as part of its subcontract agreement with McHugh, must be ordered, received, unloaded, stored, if required, and installed by the employees of the D/M/WBE as directed by its supervision. McHugh cannot perform any of these functions for the D/M/WBE unless the functions are consistent with standard industry practices and approved or otherwise directed by the appropriate individuals at McHugh and/or the government agency.

The D/M/WBE may be required by McHugh to provide information regarding the timing and quantities of the material purchases in order to verify that the purchases are consistent with the project requirements. McHugh may also review and comment on the purchase orders and subcontract agreements of the D/M/WBE to ensure that they comply with its subcontract agreement and McHugh's prime contract agreement.

## 2.4 Management of Accounting and Paperwork

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All of the employees of the D/M/WBE must be specified on its certified payroll. All wages, benefits, insurance costs and taxes must be paid directly by the D/M/WBE.

The accounting, payment requests, certified payrolls and additional paperwork, including all of the required submittals for the project, must be performed, prepared or provided by the D/M/WBE with its own resources. McHugh will provide the D/M/WBE and other non-D/M/WBEs with a pay request package that shall include the required forms and an instruction sheet. The D/M/WBE must provide McHugh with a schedule of values to be included in the pay request prior to the first request for payment. McHugh will review the schedule of values and work with the D/M/WBE to ensure that the schedule properly reflects its work and fully meets the requirements of the owner or government agency.

On projects that are governed by federal regulations, the D/M/WBE must perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force. Moreover, the D/M/WBE cannot subcontract 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.

Government agencies typically require McHugh and all of its subcontractors (D/M/WBEs and non-D/M/WBEs) to submit certified payrolls on a regular basis. Each subcontractor is required to provide a written statement to McHugh with each certified payroll that is signed by an officer of the subcontractor, which indicates that the subcontractor has complied with all of the requirements in its subcontract agreement.

## 3.0 Trucking and Excavation

### 3.1 Trucking

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The rules related to trucking vary from agency to agency. It is important to check the rules applicable to each job before claiming credit for any trucking services. To receive D/M/WBE credit for trucking services, the D/M/WBE is typically required to own and operate at least one fully licensed, insured, and operational truck used on the contract. To perform a commercially useful function, a D/M/WBE must also be responsible for the management and supervision of the entire trucking operation or a specified portion of the trucking operation to which it has been committed. There cannot be a contrived arrangement for the purpose of meeting a D/M/WBE goal. A D/M/WBE can supplement its fleet by leasing a truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the D/M/WBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent of the D/M/WBE, so long as the lease gives the D/M/WBE absolute priority for use of the leased truck. Otherwise, the D/M/WBE does not receive full credit for D/M/WBE participation. Leased trucks must display the name and identification number of the D/M/WBE. The D/M/WBE trucker must also hold the necessary, where appropriate, license, hauling permit, etc., as required by the State to transport material on public highways. To count the value of D/M/WBE trucking services toward a contract goal, the following can occur:

- The D/M/WBE may lease trucks from another D/M/WBE, including an owner-operator that is certified as a D/M/WBE. The D/M/WBE can count the entire value of services performed by these D/M/WBE trucks.

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- The D/M/WBE may also lease trucks from non- D/M/WBEs and owner-operators. The D/M/WBE can count the value of these trucking services up to the value of services performed by the D/M/WBE trucks used on the contract.
- D/M/WBE participation can be counted for the value of services of non- D/M/WBE trucks that exceed the value of the services performed by D/M/WBE trucks only in the amount of the fee or commission a D/M/WBE receives as a result of the lease arrangement.

The following examples illustrate costs that may be counted toward McHugh's D/M/WBE goals in certain common circumstances involving D/M/WBE trucking subcontractors. These examples are based on federal DBE regulations and will not apply in every situation. Therefore, McHugh should conduct a thorough review of bid specifications, special conditions and contract language as well as applicable regulations, statutes, codes, ordinances and rules for specific provisions regarding counting credit for work performed by D/M/WBE trucking subcontractors.

- The D/M/WBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates with drivers it employs.
- The subcontractor D/M/WBE may lease trucks from another D/M/WBE, in which case the subcontractor D/M/WBE receives credit for the total value of the transportation services it provides on the contract.
- The subcontractor D/M/WBE may also lease trucks from a non-D/M/WBE, in which case the subcontractor D/M/WBE is entitled to credit for the total value of transportation services provided by non-D/M/WBE trucks not to exceed the value of transportation services provided by D/M/WBE-owned trucks

### Trucking "Red Flags"

Government agencies will likely raise questions if the following events occur:

- The D/M/WBE does not supervise the trucking operations
- The D/M/WBE leases all of its trucks as opposed to owning at least one truck
- The D/M/WBE utilizes trucks owned by McHugh

### 3.2 Excavation

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The following examples illustrate costs that may be counted toward McHugh's D/M/WBE goals in certain common circumstances involving D/M/WBE excavation activities. These examples are based on McHugh's experience and will not apply in every situation. Therefore, McHugh should conduct a thorough review of bid specifications, special conditions and contract language as well as applicable regulations, statutes, codes, ordinances and rules for specific provisions regarding counting credit for work performed by D/M/WBE trucking companies providing excavation services.

- Costs for dump fees for trucks owned and operated by the D/M/WBE can be counted toward D/M/WBE goals.
- Costs for dump fees for trucks owned and operated by a D/M/WBE trucking company hired by McHugh's D/M/WBE subcontractor can be counted toward D/M/WBE goals.
- Costs for dump fees for trucks owned and operated by a non-D/M/WBE trucking company hired by the D/M/WBE subcontractor cannot be counted toward D/M/WBE goals.



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- Costs for imported backfill materials delivered by the D/M/WBE cannot be counted toward D/M/WBE goals unless the D/M/WBE's certification clearly states that the D/M/WBE's area of specialty includes the supply of these materials.

In order to determine the portion of the trucking and excavation costs that can be counted toward McHugh's D/M/WBE goals, the following information must be prepared by the excavation subcontractor and delivered to McHugh with each pay application:

1. Attachment D (D/M/WBE Trucking Spreadsheet);
2. Copies of all dump and trucking tickets; and
3. Current certification letters for all D/M/WBE truckers and excavators.

All documentation must come directly from the D/M/WBE trucker or excavator. The D/M/WBE must pay all costs associated with its subcontract directly.

### **4.0 Assistance to D/M/WBEs**

Federal DBE regulations permit a prime contractor to provide some assistance to a D/M/WBE. The following examples illustrate the assistance McHugh may provide to a D/M/WBE in certain common circumstances. These examples are based on federal DBE regulations and will not apply in every situation. Therefore, McHugh should review bid specifications, special conditions and contract language as well as applicable regulations, statutes, codes, ordinances and rules regarding acceptable assistance McHugh can permissibly provide to D/M/WBEs.

If McHugh desires to provide assistance to a D/M/WBE, it should discuss the circumstances with the corporate compliance officer. The corporate compliance officer will evaluate the permissibility of the assistance. The corporate compliance officer will determine whether the approval of the relevant government agency should be sought.

McHugh should encourage D/M/WBEs that need various forms of assistance to work with the state supportive services program.

The following items are usually examined by government agencies to verify the D/M/WBE is performing a commercially useful function:

#### **4.1 Unloading and/or Hoisting Assistance**

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If the D/M/WBE quoted its work excluding the unloading and hoisting of materials, then the subcontract should exclude it from the scope of work, and the contract dollar amount should also exclude it. If the unloading and hoisting is to be done by McHugh, this should be clearly defined in the D/M/WBE's subcontract. If not specified in the D/M/WBE's subcontract, the government agency should be advised in advance that McHugh will provide the unloading and hoisting services.

#### 4.2 Assistance Ordering Materials and Supplies

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- Do not count toward D/M/WBE goals the cost of materials or supplies the D/M/WBE purchases from McHugh or McHugh's affiliates.
- Do not deal directly with the material supplier on matters that fall under the D/M/WBE's responsibility. For example, do not schedule, order or arrange delivery of materials for the D/M/WBE.
- The more material-intensive the D/M/WBE subcontract is, the more likely the agency will carefully scrutinize the D/M/WBE's handling of the material supply portion of the subcontract.

#### 4.3 Providing Early Payment or Cash Flow Assistance

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Most small subcontractors and suppliers, including D/M/WBEs, run tight operations from a capital and cash flow standpoint. A D/M/WBE may encounter problems making budget, paying creditors and/or making payroll. Depending on the circumstances, it may be necessary to provide some financial assistance that is not in accordance with the payment provisions of the subcontract. If this happens, McHugh should, on a case-by-case basis, establish special procedures to address the D/M/WBE's cash flow issues without jeopardizing the D/M/WBE's independence. McHugh shall not issue joint checks unless approved by the governmental agency and the corporate compliance officer.

### 5.0 Changes During Construction

#### 5.1 D/M/WBE Initiated Contract Changes

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In some instances a D/M/WBE may find that it is unable to perform portions of its subcontract work or determines that it is not in its best interest to perform this work. When this is the case, a D/M/WBE must submit to McHugh a written request. The D/M/WBE must present its position to McHugh and provide McHugh with all required documentation. In the event that McHugh agrees and can accommodate a proposed change within the constraints of McHugh's Utilization Plan and Project-Specific D/M/WBE Plan, McHugh will submit a revised Utilization Plan to the government agency for approval. McHugh and the D/M/WBE must abide by the findings of the government agency and ensure that all good faith efforts are made to meet contract D/M/WBE requirements.

#### 5.2 Agency Initiated Contract Changes

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During the course of the project, the government agency may require changes to McHugh's scope or contract terms. McHugh is required to assess these changes in a timely manner and notify the agency of any cost or time impacts. When assessing time and cost impacts, McHugh must also assess the impact to its D/M/WBE Utilization Plan. In cases where the scope is increased in items where McHugh does not have potential for acquiring participation, McHugh must notify the agency of this fact along with the time and cost impacts. In some cases McHugh will be required to show that, despite good faith efforts, McHugh requires a waiver of D/M/WBE requirements for this change.

## **6.0 Verification of Commercially Useful Function**

### **6.1 Verification by Subcontractor**

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Each D/M/WBE Subcontractor shall be required to complete and submit Attachment E each month with its Monthly Utilization Report.

### **6.2 Verification by McHugh**

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The project team shall be responsible to complete the electronic version of Attachment F quarterly for each D/M/WBE subcontractor. The completed forms shall be reviewed by the corporate compliance officer and any issues that are discovered shall be discussed with the project team.

## **Attachments**

**Attachment A – Good Faith Efforts**

**Attachment B – Exhibit G Diversity Plan**

**Attachment C – D/M/WBE Union Manpower Request Form**

**Attachment D – D/M/WBE Trucking Spreadsheet**

**Attachment E - D/M/WBE Certification**

**Attachment F – D/M/WBE Subcontractor/Supplier Checklist**

## **GLOSSARY OF TERMS**

**Area of specialty.** The description of D/M/WBE's activity that has been determined to be most reflective of the firm's claimed specialty or expertise. Each D/M/WBE letter of certification contains a description of the firm's area of specialty. Credit toward the D/M/WBE goals shall be limited to the participation of firms performing within their area of specialty.

**Bid.** A bid, proposal or submittal detailing a description of the services or work to be provided by the contractor in response to a bid solicitation, request for proposal, request for qualification or task order request.

**Bidder.** Any person or entity that submits a bid, proposal, qualification or submittal that seeks to enter into a contract with the soliciting government agency.

**Broker.** A person or entity that fills orders by purchasing or receiving supplies from a third-party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his/her supplier and his/her customer.

**Commercially Useful Function.** Responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

**DBE Regulations.** 49 C.F.R. 26, the Department of Transportation's disadvantaged business enterprise regulations for DOT-funded contracts.

**Disadvantaged business enterprise (DBE).** A for-profit small business:

- a) That is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and
- b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**D/M/WBE Manufacturer.** A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

**D/M/WBE Regular Dealer.** A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

**Economically disadvantaged.** An individual whose personal net worth is less than \$1.32 million.

**Good Faith Efforts.** Actions undertaken by a bidder or contractor to achieve the D/M/WBE goal that, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

**Joint venture.** An association of a DBE, MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the DBE, MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest.

## **Guidelines for Working with Disadvantaged, Minority, and Woman Business Enterprises (D/M/WBEs) April 30, 2014**

**Minority business enterprise (MBE).** A small local business which is at least 51% owned by one or more economically disadvantaged minority persons, or in the case of a publicly held corporation, at least 51 percent of all classes of the stock of which is owned by one or more economically disadvantaged minority persons, whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged minority persons.

**Minority person.** Any of the following racial or ethnic groups:

- a) African Americans or Blacks (persons having origins in any of the Black Racial groups of Africa);
- b) Hispanics (persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race);
- c) Asian-Americans (persons having origins in any of the original peoples of East Asia, Southeast Asia, the Indian subcontinent, or the Pacific Islands);
- d) Other groups or other individuals found by the government agency to be socially and economically disadvantaged and to have suffered actual racial or ethnic discrimination and decreased opportunities to compete for contracts; and
- e) For purposes of contracts funded by state or federal governmental sources, groups found to be eligible for purposes of the designation of DBEs by such governmental sources.

**Owned.** Possessing all of the customary incidents of ownership, including the right of disposition, and sharing in all of the risks, responsibilities and profits commensurate with the degree of ownership.

**Small business.** A small business as defined by the SBA, pursuant to the business size standards found in 13 C.F.R. Part 121, relevant to the scope(s) of work the firm seeks to perform on government contracts.

**Socially and economically disadvantaged individual.** Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- a) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- b) Any individual in the following groups, members of which are reputedly presumed to be socially and economically disadvantaged:
  - 1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - 2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - 3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
  - 4) "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), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong;
  - 5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - 6) Women;
  - 7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**Supplier or distributor.** A company that owns, operates or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates or maintains a store,

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warehouse or other establishment in which the materials or supplies required for performance of the Contract are bought, kept in stock and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

**Woman business enterprise (WBE).** A small local business that is at least 51% owned by one or more economically disadvantaged women, or in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more economically disadvantaged women, whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged women.

**ATTACHMENT A  
GOOD FAITH EFFORTS**

James McHugh Construction Co. must make good faith efforts to meet D/M/WBE goals, either by meeting the goals or by documenting adequate good faith efforts to meet the goals. McHugh should make sincere and aggressive efforts to meet D/M/WBE goals. If McHugh does not meet the D/M/WBE goals, then it must document its adequate good faith efforts to meet the goal.

McHugh should not be automatically denied the award of a contract for not meeting D/M/WBE goals. For example, state DOTs do not have a quota for D/M/WBE on USDOT-assisted contracts.

Attempting to obtain a contract on the basis of documented good faith efforts should be McHugh's last resort. In other words, McHugh should make sincere, intensive and aggressive efforts to meet the D/M/WBE goals and should resort to a good faith efforts submission only if its efforts do not produce D/M/WBE participation meeting the goals. However, as detailed in Subsection e below, on USDOT assisted contracts, McHugh is not required to use a DBE if the DBE price is excessive or unreasonable when compared to a non-DBE quote or self-performing the work. However, if McHugh rejects an excessive DBE quote, McHugh may be determined to have not made good faith efforts submission.

McHugh should also not be required to use a D/M/WBE it believes does not have the capabilities to perform the work.

If it is necessary for McHugh to make a good faith effort submission, document every step taken to satisfy the government agency's good faith effort requirements and meet the D/M/WBE goals.

McHugh must be able to demonstrate, in writing, that it complied with the good faith effort requirements. Keep in mind that if McHugh does not meet the contract D/M/WBE goal, it will need to convince the agency that it is appropriate to award the contract to McHugh on the basis of the documented good faith efforts. As a result, the efforts discussed in Subsection d below must be documented in case it is necessary to make a good faith effort submission.

McHugh must thoroughly understand the listed examples or types of actions that government agencies will consider as part of McHugh's good faith efforts to obtain D/M/WBE participation. Keep in mind also that government agencies will likely not consider its list to be exclusive or exhaustive.

The following is the list of the types of good faith efforts found in the 49 C.F.R. § 26.

- a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified D/M/WBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the D/M/WBEs to respond to the solicitation. The bidder must determine with certainty if the D/M/WBEs are interested by taking appropriate steps to follow up initial solicitations.
- b. Selecting portions of the work to be performed by D/M/WBEs in order to increase the likelihood that the D/M/WBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate D/M/WBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- c. Providing interested D/M/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.

- d. Negotiating in good faith with interested D/M/WBEs. It is the bidder's responsibility to make a portion of the work available to D/M/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available D/M/WBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of D/M/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for D/M/WBEs to perform the work.
- e. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including D/M/WBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using D/M/WBEs is not in itself sufficient reason for a bidder's failure to meet the contract D/M/WBE goal, as long as such costs are reasonable. Also, 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. Prime contractors are not required to accept higher quotes from D/M/WBEs if the price difference is excessive or unreasonable, however, agency approval is necessary in determining "excessive price" for a good faith effort determination.
- f. Not rejecting D/M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- g. Making efforts to assist interested D/M/WBEs in obtaining bonding, lines of credit, or insurance as required by your agency or contractor. Such efforts would include introducing the D/M/WBE to professionals in these fields.
- h. Making efforts to assist interested D/M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. (See section on assisting D/M/WBEs below).
- i. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of D/M/WBEs.



**ATTACHMENT B  
DIVERSITY PLAN (EXHIBIT G)**

Subcontractor shall, in combination with its sub-subcontractors or suppliers, if any, obtain not less than the following percentages of disadvantaged-owned, minority-owned, and/or women-owned business enterprise (D/M/WBE) participation (collectively referred to in this Exhibit as "D/M/WBE Credit" or "Credit") in the Subcontract Work.

\_\_\_\_\_ % DBE  
\_\_\_\_\_ % MBE  
\_\_\_\_\_ % WBE

Subcontractor acknowledges that McHugh is obligated by the prime contract to provide specified levels of D/M/WBE credit and that McHugh is relying on Subcontractor for the foregoing contribution toward those specified levels of credit. Subcontractor acknowledges that it is bound and shall abide by the terms of the D/M/WBE Plan attached as part of this Exhibit G. Subcontractor represents and warrants that all entities providing D/M/WBE Credit with respect to the Subcontract Work, including Subcontractor if it is contributing toward the Credit itself, are certified by the appropriate government agencies to perform the Subcontract Work and receive credit for the Subcontract Work. Subcontractor represents that it and any sub-subcontractors it uses for D/M/WBE credit shall have sufficient resources to perform the Subcontract Work and shall be responsible for and will actually perform, manage, and supervise the Subcontract Work. Subcontractor and any sub-subcontractors it uses for D/M/WBE credit shall provide to McHugh the name(s) and contact number(s) for personnel assigned to supervise both worksite and office operations. Subcontractor shall not subcontract a significantly greater portion of the Subcontract Work than would be expected on the basis of normal industry practice.

Subcontractor shall be responsible to ensure that all entities providing D/M/WBE Credit with respect to the Subcontract Work, including Subcontractor if it is a certified D/M/WBE contractor, serve a commercially useful function as defined by 49 CFR 26.55(c). Without limiting the foregoing, D/M/WBE entities must, with respect to materials and supplies used, negotiate the price, determine the quantity and quality, order the materials, and pay for and install the materials and supplies. Subcontractor shall notify McHugh of the identity of any parties with whom Subcontractor intends to enter into any sub-subcontracts, material purchase orders, equipment leases, or other agreements. McHugh reserves the right to review and reject any and all proposed sub-subcontracts, purchase orders, equipment leases, and other agreements with third parties where the use of such third parties is inconsistent with this Exhibit G and the laws, rules, and regulations applicable to the project. Neither the approval of nor the failure on the part of McHugh to review or reject such arrangements shall relieve the Subcontractor of any of its obligations.

In the event: i) it is determined that the Subcontractor (or any sub-subcontractor that is providing credit) fails to perform a commercially useful function due in whole or in part to the actions of the Subcontractor (or actions of the sub-subcontractor if such sub-subcontractor is providing credit); or ii) Subcontractor or any sub-subcontractors or others Subcontractor is relying upon for D/M/WBE Credit is not properly certified or later becomes decertified; or iii) that for any other reason that is in whole or in part the fault of Subcontractor or others Subcontractor is relying upon for D/M/WBE Credit, the Owner denies D/M/WBE credit for the Subcontract Work; then such failure shall be considered to be a material fault of the Subcontractor and if not corrected by Subcontractor within three (3) days after receipt of written notice from McHugh, McHugh shall have the right to terminate the Subcontractor and, whether the Subcontractor is terminated by McHugh or not, McHugh may recover from Subcontractor any damages McHugh suffers as a result of such default. Subcontractor agrees to notify McHugh immediately in the event Subcontractor becomes aware of any event in i through iii of this paragraph.

Subcontractor agrees to fully cooperate with McHugh and the applicable government agencies in every respect to ensure that the D/M/WBE Credit is achieved and that the Subcontractor, and any relevant sub-subcontractors, performs a commercially useful function. Subcontractor shall provide all certified payroll and all other reporting required in compliance with the applicable laws, regulations, the prime contract, and this agreement. Subcontractor shall submit a monthly certification with each payment application, signed by an authorized officer of Subcontractor, certifying that Subcontractor is in compliance with this Exhibit G and is performing a commercially useful function.

With regard to any Subcontract Work performed on a time and material or cost plus a fee basis, Subcontractor acknowledges and agrees that it is in Subcontractor's best interest to perform the Subcontract Work on such basis.

Workforce Requirements

Subcontractor shall obtain not less than the following percentages of workforce participation with respect to the combined workforce of itself and all its sub-subcontractors:

- \_\_\_\_\_ % minority journey workers
- \_\_\_\_\_ % female journey workers
- \_\_\_\_\_ % minority apprentices
- \_\_\_\_\_ % female apprentices
- \_\_\_\_\_ % minority laborers
- \_\_\_\_\_ % female laborers
- \_\_\_\_\_ % Chicago residents
- \_\_\_\_\_ % Community hires

To qualify for participation, apprentices must be in a program recognized by the U.S. Department of Labor. If "helpers" are used, they must be paid at full journey worker scale.

**ATTACHMENT C**  
**D/M/WBE UNION MANPOWER REQUEST FORM**

Pursuant to the Prime Contract D/M/WBE Requirements, *Subcontractor {X}* is requesting assistance from General Contractor in obtaining qualified union manpower for *{specific scope of work}* to be performed under the subcontract agreement.

We are requesting assistance in obtaining the following positions: *{four (4) each Carpenters, one (1) each Operator CL1 and one (1) each Operator CL3}*. We will start this work on *{day and date}* in order to not delay the project schedule.

Please include names and contact information for the listed positions as we have to contact, interview and hire for these positions.

Please fill the names and contact information in the table below and email back to *{somebody@dbesubcontractorx.com}*:

<b>Number</b>	<b>Name</b>	<b>Trade</b>	<b>Phone Number</b>
1	<i>John Doe</i>	<i>Carpenter JM</i>	<i>(312) 735-8347</i>
2	<i>Jane Doe</i>	<i>Operator CL3</i>	<i>(630) 555-8888</i>
3			
4			
5			
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**James McHugh Construction Co.**

**ATTACHMENT E  
D/M/WBE CERTIFICATION**

(To Be Completed by Subcontractor with each Pay Application)

Project Name: \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_

Date: \_\_\_\_\_

By the undersigned's execution of this certification, the undersigned represents and certifies that except as listed otherwise at the end of this form, the following are true and correct.

Is your D/M/WBE Certification Current?  Yes  No

Is the scope of your work within your D/M/WBE's certification?  Yes  No

1. The undersigned is authorized to execute this form on behalf of Subcontractor and has personal knowledge of the matters certified.
2. The Subcontractor is performing a commercially useful function, as defined by 49 C.F.R. 26.55
3. All of the Subcontractor's employees have been hired by Subcontractor without assistance from or referral by McHugh.
4. Subcontractor's workforce is directed by management employed by Subcontractor.
5. Subcontractor is not being assisted in the Subcontract Work by McHugh or any other person or entity.
6. If the Subcontract Work includes submittals, such submittals shall be prepared by employees of Subcontractor.
7. Subcontractor negotiated the purchase of all materials required for the Subcontract Work, including the price of such materials.
8. An employee of Subcontractor is scheduling and ordering all of the materials required for the Subcontract Work and Subcontractor is paying for all such materials.
9. Subcontractor either owns or has leased all of the equipment used in performing the Subcontract Work.

The undersigned understands that if any of the foregoing are not true in any way, the exceptions to such statements or other reasons such statements are not true are required to be and are described and listed below.

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

IN WITNESS WHEREOF, this D/M/WBE Certification has been executed and delivered as of the date first written above.

Subcontractor

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**James McHugh Construction Co.**

**ATTACHMENT F**  
**D/M/WBE SUBCONTRACT CHECKLIST**  
(To Be Completed Quarterly by McHugh Project Team)

Project Name: \_\_\_\_\_ Job #: \_\_\_\_\_

D/M/WBE Name: \_\_\_\_\_

Scope of Subcontract Work: \_\_\_\_\_

Has the subcontract been executed by both parties?  Yes  No

Is D/M/WBE Certification Current:  Yes  No

Is the scope within D/M/WBE's certification?  Yes  No

Date of Review: \_\_\_\_\_ Completed by: \_\_\_\_\_

Reviewed by PM: \_\_\_\_\_

Subcontract Value: \_\_\_\_\_

Amount Paid to Date: \_\_\_\_\_

Amount Claimed towards D/M/WBE Goal: \_\_\_\_\_

**Performance**

Is all the Subcontract Work being done by the D/M/WBE firm?  Yes  No  
If not, who else is performing work? \_\_\_\_\_

Does a foreman or superintendent employed by the D/M/WBE direct the workers?  Yes  No  
What is that person's name? \_\_\_\_\_

Has that employee worked for the D/M/WBE prior to this job?  Yes  No

Is the D/M/WBE working without assistance from McHugh or other non-DBE contractors?  Yes  No

Are there submittals/shop drawings due from the D/M/WBE?  Yes  No

Will/has the D/M/WBE prepare(d) the submittals/shop drawings itself?  Yes  No  
If answered no, who will prepare the submittals/shop drawings? \_\_\_\_\_

**Labor** (These questions are to be answered after surveyinga representative sample of the D/M/WBE employees in the field. At least 5, or all employees if fewer than 5, employees are employed by the D/M/WBE.)

Are D/M/WBE employees working exclusively for D/M/WBE?  Yes  No

Do hardhats and vests have the logo of the D/M/WBE?  Yes  No  
If not, whose logo? \_\_\_\_\_

Do employees correctly identify their employer and supervisor when asked?

**James McHugh Construction Co.**

**ATTACHMENT F**  
**D/M/WBE SUBCONTRACT CHECKLIST**  
(To Be Completed Quarterly by McHugh Project Team)

Are all D/M/WBE employees listed on certified payroll and do hours reported seem accurate?  Yes  No

**Materials**

Does DBE representative order, pay for and schedule delivery of materials?  Yes  No

Did DBE determine who to obtain the materials from and at what price?  Yes  No

Are materials being delivered to the D/M/WBE, either at the jobsite or its facility?  Yes  No

**Equipment and Trucking**

Is the equipment used by the D/M/WBE owned by the D/M/WBE or leased from a third party?  Yes  No

Does the D/M/WBE logo appear on all equipment?  Yes  No

If not, whose logo is on the equipment? \_\_\_\_\_  Yes  No

Are any magnetic signs used to cover other logos?

If trucks are leased, are they under long term leases?  Yes  No

**James McHugh Construction Co.**

**ATTACHMENT F**

**D/M/WBE SUPPLIER WORKSHEET**

(To Be Completed Quarterly by McHugh Project Team)

**Name of D/M/WBE Supplier:** \_\_\_\_\_

Percentage of PO that can be credited to D/M/WBE goals? \_\_\_\_\_

If regular dealer, who is D/M/WBE's supplier?  Yes  No

Yes  No

Has supplier delivered purchased materials with its own trucks?  
If not, is material bulk goods?

Who negotiated purchase for D/M/WBE? \_\_\_\_\_