



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

July 16, 1991

SRF 91-21

MEMORANDUM

SUBJECT: MBE/WBE Utilization under SRF Refinance Projects

FROM: Richard T. Kuhlman, Chief /s/
SRF Branch (WH-547)

TO: Jack A. Rychecky, Financial Analyst
Municipal Facilities Branch (8WM-MF)

This is in response to your request for approval to include in Colorado's MBE/WBE utilization reports SRF refinance assistance it provides to Metro Denver Wastewater Reclamation District.

It is preferable for States to designate projects other than those for refinancing to meet their MBE/WBE requirements. In particular, we would be concerned about the potential to double-count MBE/WBE utilization funded through the construction grants program.

The attached summary is a discussion of the issues and options. Based on our analysis and discussions with the Office of Small and Disadvantaged Business Utilization (OSDBU), we approve the reporting by Colorado of any documented and verifiable MBE/WBE utilization under this project. This decision has been cleared and concurred with by OSDBU.

Attachment

cc: John M. Ropes, OSDBU
George Mori, OSDBU
SRF Coordinators, Regions I-X

KEY WORDS: MBE/WBE
Refinancing

SRF ISSUE SUMMARY

Date: June 26, 1991
Prepared by: Kit Farber /s/

ISSUE: Using refinance projects to achieve State MBE/WBE fair share objectives

BACKGROUND:

Jack Rychecky, SRF Coordinator for Region VIII, requests clarification of MBE/WBE program plan language (paragraph VIII.B.9.) which states that,

"States should not count refinancing projects toward meeting their "Fair Share" objective except in unusual cases. In such cases, prior approval must be obtained from OSDBU and the Headquarters program office."

OSDBU's concern is that MBE/WBE utilization would be double-counted if SRF assistance were provided to refinance municipal debt for the non-Federal share of a construction grants project. Double-counting would result if that project had counted toward meeting the construction grants fair share objective and it were also counted toward meeting the SRF fair share objective. OSDBU also objects to crediting past utilization toward current goals and would like to see current appropriations going to new contracts.

Colorado is considering providing about \$20 million toward the refinancing of an equivalency project which has been funded entirely from State monies (no Federal construction grants funds are involved). This represents a significant portion of its FY 1989, FY 1990 and FY 1991 capitalization grants which total about \$39 million. Colorado states that some MBE/WBE firms have been used on the project. Documentation will be provided to the Region at the time of the annual review. (The project was subject to the district's MBE/WBE utilization requirements.) Because most of the State's MBE/WBE firms are concentrated in the district that will receive the refinance assistance (Metropolitan Denver Wastewater Reclamation District), the State believes it will not be able to meet its fair share objective by increasing the requirement placed on other projects.

Region VIII has asked that EPA guidance be interpreted to mean that the amount of funds going to refinancing would be deducted from the total amount of the capitalization grant. The remaining portion of the capitalization grant would be subject to the fair share percentage. This would reduce the targeted amount of contracts going to MBE/WBE firms. For example, if a State receives a capitalization grant for \$10 million and negotiates a fair share percentage of 10 percent, the State's fair share objective would be \$1 million. If the State provides \$4 million

in refinance assistance, then the fair share objective would be reduced to 10 percent of \$6 million, or \$600,000.

The intent of OSDBU's MBE/WBE program plan language is that the target amount going to MBE/WBE firms would not be reduced by the amount of the refinance assistance. Instead, to accomplish its fair share objective, the State would select equivalency projects other than those being refinanced to undertake the affirmative steps. The State might require nonrefinance projects to utilize a higher percentage of MBE/WBE firms than the State's overall percentage to offset the lack of MBE/WBE contribution from refinance projects.

In fact, this approach is consistent with SRF regulations (section 35.3145(d)) which allow States to select "certain equivalency projects to undertake affirmative steps." Whether or not refinancing is part of their SRF programs, States enjoy the flexibility to choose which projects and to what extent a project will be required to apply the MBE/WBE requirements and requirements.

During its FY 1989 and FY 1990 annual reviews, the Region found that Colorado had accomplished far less than its fair share goal. The State was admonished in the Region's program evaluation report and now has a better understanding of its responsibilities in implementing the MBE/WBE program. In addition, during the third quarter of FY 1990, the Region provided Colorado training to increase its awareness of MBE/WBE opportunities.

POLICY OPTIONS:

Either:

- ◆ Allow the State to include any documented amounts awarded to MBE/WBE firms under refinance projects in reporting its MBE/WBE accomplishments; or
- ◆ Do not allow the State to count amounts awarded to MBE/WBE firms under refinance projects toward meeting its MBE/WBE fair share objective.

Under this option, either:

- Reduce the State's targeted MBE/WBE utilization amount by applying the State's fair share percentage to the amount of the capitalization grant less the amount of refinance assistance provided; or
- Maintain the full targeted MBE/WBE utilization amount by applying the State's fair share percentage to the total capitalization grant.

DISCUSSION:

The option favored by the Region for SRF refinance assistance is to include any equivalency financing which was done without using Federal funds. Short of this, the Region suggests reducing the capitalization grant by the amount of refinance assistance in determining the target MBE/WBE utilization. An argument for this approach is that the State would have a better chance of meeting the reduced goal than meeting a goal calculated on the full amount of the capitalization grant, especially if the amount of refinancing represents a large portion of the capitalization grant.

On the other hand, if the target amount going to MBE/WBE firms were based on the full amount of the capitalization grant, the State could still meet its goal by requiring nonrefinance projects to attain a higher MBE/WBE utilization.

The effect of reducing the target amount going to MBE/WBE firms is to exempt refinance projects from the MBE/WBE requirement, which is a crosscutting authority. To date, we have not exempted refinance projects from meeting other crosscutter requirements. If we exempt such projects from meeting the MBE/WBE requirement, do we also exempt them from the requirements of other crosscutters?

OSDBU would endorse the option of applying the fair share objective to the full amount of the capitalization grant. OSDBU's intent was that States would achieve their fair share goals by requiring nonrefinance projects to strive toward higher levels of utilization. This approach is consistent with SRF regulations which allow States flexibility in applying the MBE/WBE requirements to selected equivalency projects.

In general, OSDBU would not favor allowing States to report the amount awarded to MBE/WBE firms under refinancing toward meeting their MBE/WBE objectives. But, OSDBU's primary objection would be concerning the inclusion of those amounts awarded under SRF refinancing of the non-Federal share of construction grant projects. But, this is not a construction grants project.

According to the Region, it would like our approval to include the Metro project in the MBE/WBE utilization reports because: (1) FY 1991 Federal funds represent a small portion of the project; (2) according to Region VIII's MBE/WBE Coordinator, Metro has an excellent and easily verifiable MBE/WBE program; (3) other aspects of the project meet equivalency; and (4) Metro proceeded with non-Federal funding in anticipation of receiving SRF refinance assistance following protracted negotiations with the State.

The State asserts that the project will count toward equivalency and will meet all crosscutter requirements. The Region will confirm the State's assertions at the time of the annual review.

RECOMMENDATION:

I favor basing Colorado's MBE/WBE goal on the full amount of the capitalization grant. Because the refinancing does not involve Federal funding under the construction grants program, any fully documented utilization of MBE/WBE firms could be included toward the State's achievement of its fair share objective, subject to a favorable finding at the annual review.

DISPOSITION:

We approve, and OSDBU concurs, that Colorado may report any documented and verifiable MBE/WBE utilization under this project. A memorandum conveying this determination was sent to the Region, and copies were sent to OSDBU and the SRF Coordinators.