

WAC 296-140-002 Labor standard certification for Category 1 clean energy projects under RCW 82.08.962 and 82.12.962. (1) To qualify for department certification for the 50 percent retail sales and use tax remittance for machinery and equipment installed and the labor and services rendered in respect to installing the machinery and equipment, a Category 1 clean energy project must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Consult with OMWBE and DVA to develop a plan to meet the standards or good faith efforts. The plan will identify the necessary and reasonable steps which, by their scope, intensity, and appropriateness, could reasonably be expected to meet the women, minority, and veteran-owned businesses procurement and contract standards, even if they were not fully successful and identify the documentation for the specific good faith efforts in the plan;

(ii) Have 5.5 percent of the contract dollars awarded to minority-owned businesses, 9.5 percent of the contract dollars awarded to women-owned businesses, and five percent of the contract dollars awarded to veteran-owned businesses; or

(iii) Demonstrate good faith efforts included in the plan required by (a)(i) of this subsection. In developing the plan with OMWBE and DVA, the following are good faith efforts which include, but are not limited to:

(A) Soliciting through all reasonable and available means as identified in the plan including, but not limited to: Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms; participating in conferences and trade shows; and identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract.

(B) Providing reasonable time for women, minority, and veteran-owned businesses to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans, specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals.

(C) Negotiating in good faith with interested women, minority, and veteran-owned businesses. The fact that there may be some additional costs involved in finding and using women, minority, and veteran-owned businesses is not in itself sufficient reason for a failure to meet the standard, as long as such costs are reasonable. The project developer or its designated principle contractor are not, however, required to accept higher quotes from women, minority, and veteran-owned businesses if the price difference is excessive or unreasonable.

(D) Selecting portions of the work to be performed by women, minority, and veteran-owned businesses in order to increase the likelihood that the standard will be achieved. This includes apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation even when the project developer or its designated principle contractor might otherwise prefer to perform these work items with its own forces, and where possible, establishing flexible time frames for performance to encourage participation.

(E) Not rejecting women, minority, and veteran-owned businesses as being unqualified without sound reasons based on a thorough inves-

tigation of their capabilities. The project developer or its designated principle contractor standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the standard.

(F) Making efforts to assist interested women, minority, and veteran-owned businesses in obtaining necessary equipment, supplies, materials, or related assistance or services.

(G) Effectively using the services of OMWBE and DVA; women, minority, and veteran community organizations; women, minority, and veteran contractors' groups; and other appropriate organizations to provide assistance in the recruitment and placement of women, minority, and veteran-owned businesses.

(H) Mere pro forma efforts are not good faith efforts to meet the women, minority, and veteran business standards.

(I) Other efforts identified by OMWBE or DVA included in the plan required by (a) (i) of this subsection.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in a 60 month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws.

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals.

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of 15 percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

(C) The following situations do not meet the requirements for good faith efforts:

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) Not using a state-approved apprenticeship program while you are trying to get your own program approved by the Washington state apprenticeship and training council;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) Not replacing an apprentice that quit or was fired; or not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

(i) Have a minimum of 35 percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of 20 percent of total labor hours by local residents; or

(ii) Good faith efforts which include, but are not limited to:

(A) Listing the job with the local Washington WorkSource office in advance of the start of the project or contract;

(B) Participating in community job fairs, conferences, and trade shows;

(C) Requesting the dispatch of local workers through union halls;

(D) Informing community partners/organizations of opportunities in advance of the start of the project or contract;

(E) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and

(F) Designating a jobs coordinator to be responsible for the local hire requirements with the experience and qualifications necessary to identify and recruit local workers, and provide referrals as appropriate to comply with local hire requirements.

(2) To qualify for department certification for the 75 percent retail sales and use tax remittance for machinery and equipment installed and the labor and services rendered in respect to installing the machinery and equipment, a Category 1 clean energy project must meet the following minimum requirements:

(a) Meet the standards for certification for the 50 percent tax remittance under WAC 296-140-002(1); and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for department certification for the 100 percent retail sales and use remittance for machinery and equipment installed and the labor and services rendered in respect to installing the machinery and equipment, a Category 1 clean energy project must have a signed PLA or CWA for the project prior to construction starting on the project. Separately meeting the standards for certification for the 50 percent and 75 percent tax remittance under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

[Statutory Authority: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060. WSR 23-11-125, § 296-140-002, filed 5/23/23, effective 6/23/23. Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-002, filed 10/13/21, effective 11/13/21.]