

The Environmental Protection Agency (EPA) Office of Small Business Programs (OSBP) Disadvantaged Business Enterprise Program – 40 CFR Part 33

Formerly the Minority-Owned Business Enterprise and Woman-Owned Business Enterprise (MBE/WBE) Program, the Disadvantaged Business Enterprise (DBE) Program is an outreach, education, and goal program designed to increase and encourage the utilization and participation of DBEs in procurements funded by EPA assistance agreements. The DBE Program requirements apply to all procurements for equipment, supplies, construction and services under all EPA grants, cooperative agreements, and IAGs.

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Specific DBE Program functions include:

- Developing and monitoring DBE Program policy and procedures.
- Providing outreach and training to internal and external DBE program stakeholders.
- Providing technical and programmatic assistance to minority and women-owned businesses.
- Collecting, compiling, and analyzing data on MBE/WBE utilization under EPA financial assistance agreements, including Interagency Agreements (IAs).

Recipients of EPA financial assistance agreements are required to seek, and encouraged to utilize small, minority, and women-owned businesses for their procurement needs under the financial assistance agreement. This is done through the inclusion of terms and conditions in the financial assistance agreement. The key functional components of the DBE Program are as follows:

- Fair Share Objectives
- Six Good Faith Efforts and Contract Administration Requirements
- MBE/WBE Reporting
- MBE/WBE Certification

Disadvantaged Business Enterprises (DBEs) are:

- entities owned and/or controlled by a socially and economically disadvantaged individuals as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) (10% statute), and Public Law 102-389 (42 U.S.C. 4370d) (8% statute), respectively;
- a Small Business Enterprise (SBE);
- a Small Business in a Rural Area (SBRA);
- a Labor Surplus Area Firm (LSAF); or
- a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.

Minority Business Enterprises (MBEs) are entities that are at least 51% owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively.

Women's Business Enterprises (WBEs) are entities that are at least 51% owned and/or controlled by women (under the 10% and 8% statutes).

Fair Share Objectives

A fair share objective is a goal based on the capacity and availability of qualified, certified MBEs and WBEs in the relevant geographic market for the grant recipient in the procurement categories of construction, equipment, services, and supplies... compared to the number of all qualified entities in the same market for the same procurement categories.

- A fair share objective is not a quota.
- A recipient cannot be penalized for not meeting its fair share objectives.
- Once negotiated, fair share objectives remain in place for three years.

<u>Procurement Category</u>	<u>FY 2014</u>	<u>MBE goal</u>	<u>FY 2014</u>	<u>WBE goal</u>
Construction		3 %		1 %
Equipment		2 %		1 %
Supplies		1 %		1 %
Services		1 %		1 %

Good Faith Efforts

The Good Faith Efforts are required methods implored by all EPA financial assistance agreement recipients to ensure that all disadvantaged business enterprises (DBEs) have the opportunity to compete for procurements funded by EPA financial assistance dollars.

The Six Good Faith Efforts Are:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the above steps.

MBE/WBE Reporting

All EPA financial assistance recipients are required to report back to the Agency on their efforts to comply with the DBE Program requirements.

- Complete & submit EPA Form 5700-52A Part II with each contractor's application for payment.

MBE/WBE Certification

Under EPA's DBE Program it is required that MBEs and WBEs be certified in order for their utilization to count toward an EPA financial assistance recipient's accomplishments under the program.

EPA OSBP Headquarters is responsible for implementing and processing the certification of MBE/WBE firms. Regional DBE coordinators will assist by providing forms to interested firms and fielding general questions. Under the new DBE Program entities can no longer self-certify. EPA will accept certifications from:

- The Small Business Administration (SBA) (both SBA 8(a) program certifications and SBA Small Disadvantaged Business (SDB) Program self-certifications);
- The Department of Transportation's state implemented DBE Certification Program (with U.S. citizenship);
- Tribal, State and local governments, as long as their standards for certification meet or exceed our own; and
- Independent private organization certifications as long as their standards for certification meet or exceed our own.

If an entity holds one of these certifications, it is considered acceptable for establishing MBE or WBE status under EPA's DBE Program, and application for EPA certification is not needed. EPA will ONLY consider certification applications from entities that have first attempted to be certified by SBA or DOT, or a Tribal, State, or local government, or by an independent private organization, and be unsuccessful in that attempt. Proof of an unsuccessful attempt is required as a part of the application process.

What are the EPA MBE/WBE certification requirements?

- In order to be certified by EPA, an entity must first attempt to be certified by SBA or DOT, or a Tribal, State, or local government, or by an independent private organization, and be unsuccessful in that attempt.
- To qualify as a MBE or WBE under EPA's programs an entity must establish that it is at least 51% owned and/or controlled by socially and economically disadvantaged individuals who are of good character and are citizens of the United States.
- An individual claiming economic disadvantaged status must have an initial and continued personal net worth of less than \$750,000.

Further details available at http://www.epa.gov/osbp/dbe_team.htm