

Special Appropriations Projects (SPAPs) Workshop

Disadvantaged Business Enterprise
(DBE) Program

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EPA Region 4

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EPA's Indirect Procurement Program

Advocate and ensure that small, minority and women owned businesses are awarded a “fair share” of procurement opportunities funded by EPA financial assistance agreements

Outreach Activities

- Maintain an active program designed to locate responsible, qualified small businesses for current and future acquisitions.
- Represent the Region at government-industry conferences associated with fostering the objective of the Agency's socio-economic programs.
- Provide assistance to grantees on how to comply with the Agency's Disadvantaged Business Enterprise (DBE) Rule.

National Objectives

- Public Law 101-549 (Clean Air Act)
To the extent practicable, no less than 10% of funding for research will be made available to DBEs.
- Public Law 102-389 (Clean Water Act)
To the fullest extent possible, at least 8% of federal funding for prime and subcontracts will be made available to DBEs.

EPA's New **Disadvantaged Business Enterprise** Rule

- DBE Rule – Effective May 27, 2008
- Applies to all EPA financial assistance recipients, loan recipients and sub-recipients
- Does not apply to grants awarded **BEFORE** May 27, 2008

Key Functional Components

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

EPA grant regulations require that state and local government grant recipients, and their contractors, use six good faith efforts when using EPA grant funds to procure:

Construction

Equipment

Supplies

Services

Six Good Faith Efforts

- Maximize contracting opportunities for MBE/WBEs.
- Build relationships between Prime Contractors and MBE/WBEs.

Six Good Faith Efforts

- (1) The grantee and sub-grantee will take the necessary efforts to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
- (2) Good faith efforts shall include:

- (i) Place qualified small and minority businesses and women's business enterprises on solicitation lists;**

- (ii) Assure that small and minority businesses, and women's enterprises are solicited and used for potential sources;**

- (iii) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.**

(iv) Encourage teaming arrangements when a contract is too large for one DBE to handle individually.

(v) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency.

(vi) Require the prime contractor, if subcontracts are to be awarded, to flow down the good faith efforts listed above.

Fair Share Objectives

- EPA's DBE program includes fair share objectives for participation by minority and women owned firms that are based on actual availability of certified MBE/WBE firms.
- The goals are only targets and there is no penalty for failing to meet a goal.
- A fair share objective is not a quota.

40 C.F.R. § 31.43 Enforcement

(a) Remedies for noncompliance: If a grantee or sub-grantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or sub-grantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

- EPA could disallow a significant percentage of the grant award for failure to comply with the six good faith efforts.

(3) Wholly or partly suspend or terminate the current award for the grantee's or sub-grantee's program,

- EPA can also wholly or partly annul the current award for the grantee's or sub-grantees program,

(4) Withhold further awards for the program, or

- In the event that a grantee anticipates future grants from EPA, failure to comply with the six good faith efforts could jeopardize future funding.

(5) Take other remedies that may be legally available.

EPA has the discretion to take a combination of the above actions if warranted.

Reporting

- All EPA financial assistance recipients (Tribes, Trust Territories, Interagency Agreements) are **REQUIRED** to report back to the Agency on their accomplishments with the utilization of MBEs and WBEs.
- Reports are submitted on EPA Form 5700-52A.
- Primary recipients are responsible for reporting the accomplishments of sub-recipients (loan recipients and sub-grant recipients).
- All MBE/WBE reports **MUST** be submitted in order to successfully close-out a grant.

Certification

- The DBE Rule requires that all MBEs and WBEs be certified in order to be counted towards a recipient's MBE/WBE accomplishments.
- MBEs and WBEs must be certified by SBA, DOT, or by state, local, tribal, or private entities whose certification criteria match EPA's.

DBE Program Information

- The DBE rule and fact sheets with detailed information about the four functional components of the program can be found at: www.epa.gov/osbp

For additional information contact:

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