

# SMALL, MINORITY, AND WOMEN'S BUSINESS ENTERPRISE IN PROCUREMENT UNDER ASSISTANCE AGREEMENTS

The following is taken from GUIDANCE FOR UTILIZATION OF SMALL, MINORITY, AND WOMEN'S BUSINESS ENTERPRISE IN PROCUREMENT UNDER ASSISTANCE AGREEMENTS, distributed by the EPA Office of Small and Disadvantaged Business Utilization in July, 1997

## **Fair Share Policy**

It is EPA policy that small (SBEs), minority (MBEs), women's (WBEs) and small businesses in rural areas (SBRAs) be afforded the maximum practicable opportunity to participate as contractors, subcontractors, suppliers and otherwise in EPA awarded financial assistance programs. This policy applies to all contracts, subcontracts and procurements for supplies, construction, equipment and services under EPA grants, cooperative agreements, interagency agreements, and loans. Pursuant to this policy, recipients of grants, agreements and loans, and their prime contractors, shall make good faith efforts to award a fair share of contracts, subcontracts and procurements to SBEs, MBEs, WBEs and SBRAs.

The policy also requires that fair share objectives for MBEs and WBEs be negotiated with the States and/or recipients, but does not require that fair share objectives be established for SBEs or SBRAs. Accordingly, while good faith efforts are required with respect to SBEs, MBEs, WBEs and SBRAs, the numerical fair share objectives apply only to MBEs and WBEs.

**A fair share objective does not constitute a quota or an absolute requirement.** A fair share objective imposes an obligation on the recipient or prime contractor to exercise good faith efforts as set forth below. A recipient or prime contractor is not required to meet a fair share objective if it has made good faith efforts and has submitted documentation of such action. The minimum national fair share objective is 8%.

## **Good Faith Efforts**

Good faith efforts by a recipient or prime contractor mean efforts to attract and utilize SBEs, MBEs, WBEs and SBRAs through fulfillment of the six affirmative steps set forth below:

- (1) Include qualified SBEs, MBEs, and WBEs on solicitation lists;
- (2) Assure that SBEs, MBEs, and WBEs are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of SBEs, MBEs, and WBEs;
- (4) Establish delivery schedules, where the requirements

of the work permit, which will encourage participation by SBEs, MBEs, and WBEs;

(5) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency, U.S. Department of Commerce, as appropriate; and

(6) If the prime contractor awards contracts/procurements, require the contractor to take the affirmative steps in paragraphs a.(1) through a.(5), of this section.

## **Examples**

EPA offers the following examples of activities to assist recipients and prime contractors in carrying out the outreach, recruitment and race/gender neutral activities. Recipients are encouraged to adopt these examples and use them to evaluate prime contractors' compliance with the good faith efforts.

### (1) Include qualified SBEs, MBEs, and WBEs on solicitation lists.

(a) Maintain and update a listing of qualified SBEs, MBEs, WBEs and SBRAs that can be solicited for supplies, construction and/or services.

(b) Provide listings to all interested parties who requested copies of the bidding or proposing documents.

(c) Contact appropriate sources within your geographic area and State to identify qualified MBEs and WBEs for placement on your minority and women's business listings.

(d) Utilize other MBE/WBE listings such as those of the State's Minority Business Office, the Small Business Administration, Minority Business Development Agency, U.S. Environmental Protection Agency, Office of Small and Disadvantaged Business Utilization (OSDBU), and the Department of Transportation.

(e) Have the State environmental agency personnel review this solicitation list.

### (2) Assure that SBEs, MBEs, and WBEs are solicited.

(a) Conduct meetings, conferences, and follow-ups with SBEs, MBEs, WBEs and SBRAs, small, minority and/or women's business associations, minority media, etc., to inform these groups of opportunities to provide supplies, services, and construction.

(b) MBE utilization is facilitated if the recipient or prime contractor advertise through the minority media. Such advertisements may include, but are not limited to, contracting and subcontracting opportunities, hiring and

employment, or any other matter related to the project.

(c) Conduct pre-bid, pre-solicitation, and post-award conferences to ensure that consultants, suppliers, and builders solicit SBEs, MBEs, WBEs and SBRAs.

(d) Provide bidders and offerors with listings of qualified SBEs, MBEs, WBEs, and SBRAs and establish that a fair share of contracts/procurements should be awarded to these groups.

(e) Advertise in general circulation, trade publications, State agency publications of identified source, minority or women's business focused media, etc., concerning contracting opportunities on your projects. Maintain a list of minority or women's business-focused publications that may be utilized to solicit MBEs or WBEs.

(f) Provide interested SBEs, MBEs, WBEs or SBRAs with adequate information about plans, specifications, timing and other requirements of the proposed projects.

(g) Provide SBE, SBRA, MBE or WBE trade organizations with succinct summaries of solicitations.

(h) Notify SBEs, MBEs, WBEs or SBRAs of future procurement opportunities so that they may establish bidding solicitations and procurement plans.

(3) Divide total requirements when economically feasible, into small tasks or quantities to permit maximum participation of SBEs, MBEs, WBEs and SBRAs.

(a) Perform an analysis to identify portions of work that can be divided and performed by qualified SBEs, MBEs, WBEs and SBRAs.

(b) Scrutinize the elements of the total project to develop economically feasible units of work that are within the bonding range of SBEs, MBEs, WBEs and SBRAs.

(c) Analyze bid packages for compliance with the good faith efforts to afford SBEs, MBEs, WBEs and SBRAs maximum participation.

(4) Establish delivery schedules, where requirements of the work permit, which will encourage participation by SBEs, MBEs, WBEs, and SBRAs.

(a) Consider lead times and scheduling requirements often needed by SBE, MBE, WBE or SBRA participation.

(b) Develop realistic delivery schedules which may provide for greater SBE, MBE, WBE or SBRA participation.

(5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate.

(a) Use the services of outreach programs sponsored by the Minority Business Development Agency and/or the

Small Business Administration to recruit bona fide firms for placement on SBEs', MBEs', WBEs' or SBRAs' bidders lists to assist these firms in the development of bid packaging.

(b) Seek out Minority Business Development Centers (MBDCs) to assist recipients and prime contractors in identifying MBEs for potential work opportunities on your projects.

### **MBE or WBE Prime Contractor**

If an MBE or WBE prime contractor awards any subcontracts or procurements, such prime also must engage in the good faith efforts to achieve the fair share objectives.

### **Recordkeeping Requirements**

Recipients must retain all records documenting their and their prime contractor(s)' good faith efforts. In addition, recipients must submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Interagency Agency Agreements," to the EPA award official beginning with the Federal fiscal year quarter the recipient receives the award and continuing until the project is completed. These reports must be submitted to the award official within 30 days of the end of the Federal fiscal quarter (January 30, April 30, July 30 and October 30). EPA Form 5700-52A sets forth MBE and WBE utilization during the prior contract/procurement award phases of the grant or cooperative agreement.

### **Responsibilities**

Recipients, including non-delegated States, of EPA financial assistance are responsible for assuring the "fair share" objectives are fully implemented by itself and prime contractors.

a. Recipients must comply with the small, minority and women's business enterprise-related requirements in 40 CFR §31.36(e), and 40 CFR §30.44(b), and as applicable.

b. The recipient is responsible for ensuring that the prime contractor(s) awarding contracts/procurements comply with the regulations specified in a. above.

c. After bid opening or receipt of proposal(s), the recipient must evaluate bids to determine whether they are responsive to all material terms of the bid solicitation.