

The Six Good Faith Efforts and Contract Administration Requirements
They Keys to Outreach and Opportunity

Program Comparison

Old MBE/WBE Program

New DBE Program

Following the “Six Affirmative Steps” under 40 CFR Part 31, and the Six Positive Efforts under 40 CFR Part 30 were required by all grantees.	The “Six Good Faith Efforts” combine the “Six Affirmative Steps” and the “Six Positive Efforts” and are still required by all grantees. The substance of the efforts has not changed.
No protections for DBE Subcontractors	Several mechanisms are in place to protect DBE Subcontractors: <ul style="list-style-type: none"> • 30 day payment provision, notifications of DBE terminations, and continuing the Six Affirmative Steps after termination of a DBE. • Completion of 3 new forms to prevent “bait and switch” tactics. None of these new forms are completed, or submitted by the grant recipient. These forms are filled out by the recipient’s prime contractors and subcontractors.
No mechanism for recipients to develop and maintain their own list of DBEs	Recipients are now required to create and maintain a bidders list. There is a \$250K exemption for this requirement.

What is the Purpose of the Six 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.

What are the Six Good Faith Efforts?

- 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.
- 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.
- 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.
- Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

- Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

What are the New Contract Administration Requirements?

There are a number of new provisions designed to prevent unfair practices that adversely affect DBEs. Those provisions are as follows:

- A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.
- A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.
- If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts if soliciting a replacement subcontractor.
- A recipient must require its prime contractor to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.

What Are the New Forms Associated With the New Contract Administration Provisions?

- EPA Form 6100-2 - DBE Program Subcontractor Participation Form. This form gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have.
- EPA Form 6100-3 - DBE Program Subcontractor Performance Form. This form captures an intended subcontractor's description of work to be performed for the prime contractor and the price of the work submitted to the prime.
- EPA Form 6100-4 – DBE Program Subcontractor Utilization Form. This form captures the prime's intended use of an identified DBE subcontractor, and the estimated dollar amount of the subcontract.

Form	Requirement	Provided By:	Completed By:	Submitted To:
EPA Form 6100-2	Recipients required to have prime contractors provide form to Subcontractors	Prime Contractors	DBE Subcontractors	EPA DBE Coordinator
EPA Form 6100-3	Recipients required to have prime contractors provide form to Subcontractors	Prime Contractors	DBE Subcontractors	Recipients as part of a bid or proposal package
EPA Form 6100-4	Recipients required to have prime contractors complete the form	Recipients	Prime Contractors	Recipients as part of a bid or proposal package

What is the New Bidders List Requirement?

The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate of a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors.

- A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list.
- A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements.
- The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts on EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs.
- The bidders list must only be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. For entities receiving identified loans, the bidders list must only be kept until the project period for the identified loan has ended.

What Information Must Be Retained on the Bidders List?

- (1) Entity's name with point of contact;
- (2) Entity's mailing address, telephone number, and email address;
- (3) The procurement on which the entity bid or quoted, and when; and
- (4) Entity's status as an MBE/WBE or non-MBE/WBE.

What Are There Exemptions From The Bidders List Requirements?

- A recipient of an EPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the requirement to create and maintain a bidders list.
- A recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the bidders list requirement to an entity receiving an identified loan in an amount of \$250,000 or less, or to an entity receiving more than one identified loan with a combined total of \$250,000 or less in any one fiscal year.
- These exemptions are limited to the bidders list requirements only.