
Learner Manual – Module 9 Disadvantaged Business Enterprises (DBEs)

TRIBAL, U.S. TERRITORIES AND INSULAR AREAS ADMINISTRATIVE AND FINANCIAL GUIDANCE MANUAL FOR ASSISTANCE AGREEMENTS

*“A Nation is a stable, historically developed community of people
who share territory, economic life, distinctive culture, and language.”*

Office of Environmental Justice, U.S. EPA

U.S. Environmental Protection Agency
Updated August 2013



This manual was originally developed by the U.S. Environmental Protection Agency for Tribal Nations, but content also pertains to U.S. Territories and Insular Areas. Exception: U.S. Territories and Insular Areas are treated as states under Part 31 (and also under Part 35, Subpart A for PPGs, unlike Tribes that are covered under Subpart B).

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Module 9: Disadvantaged Business Enterprises (DBEs)

Tribal, U.S. Territories and Insular Areas Administrative and Financial Guidance for Assistance Agreements

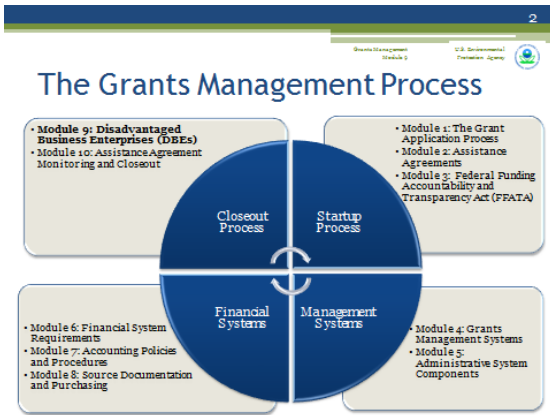
Module 9:
Disadvantaged Business Enterprises (DBEs)

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Grants Management Module 9 U.S. Environmental Protection Agency

Goal of the EPA DBE Program

Increase participation of Disadvantaged Business Enterprises (DBEs) in projects funded by EPA assistance agreements by making “good faith efforts” to seek out and utilize a “fair share” of DBEs for all procurement needs.



Office of Small Business Programs (OSBP)

What is the Office of Small Business Programs?
The Office of Small Business Programs (OSBP) is responsible for establishing policy and procedural guidance for utilization of Disadvantaged Business Enterprises (DBEs) under EPA assistance agreements. You may have worked with OSBP previously, when it was known as the Office of Small and Disadvantaged Business Utilization (OSDBU). The goal of the DBE program is to increase the participation of disadvantaged business enterprises in projects funded by EPA assistance agreements.

Learner Notes

Though Disadvantaged Business Enterprises is listed in the organizational diagram as part of the Closeout Process, it **applies to all procurements** during the grant period. The DBE report must be filed before an award can be closed out.

Why does the Disadvantaged Business Enterprise (DBE) program exist?
The DBE program was mandated by U.S. Congress in response to the large number of procurement opportunities available through assistance agreements. At EPA, assistance agreement dollars are four times as much as contract dollars. The legal authority for the program comes from two laws:

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Grants Management Module 9 U.S. Environmental Protection Agency

In Module 9

- Office of Small Business Programs (OSBP)
- Disadvantaged Business Enterprises (DBEs)
- Six Good Faith Efforts
- MBE/WBE Certification
- DBE Reporting
- The Bidders List
- Fair Share Objectives

To the extent practicable, not less than 10% of EPA funds are made available to disadvantaged business enterprises. (Public Law 101-549, Nov 15, 1990 (Clean Air Act))

To the fullest extent possible, at least 8% of EPA funds are made available to socially and economically disadvantaged concerns, including women and historically Black colleges and universities. (Public Law 102-389, Oct 6, 1992 (Clean Water Act))

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DBE Program

- The DBE Program is a requirement of every EPA grant.
- The Office of Small Business Programs is responsible for policy and procedural guidance.
- The DBE program encourages federal dollars to flow down to disadvantaged businesses (such as Tribally-owned businesses).
- DBE policy ensures disadvantaged businesses receive their fair share of federally funded projects.

What does the DBE Program do?

The DBE Program is a requirement of every EPA assistance agreement. The program encourages federal dollars to flow down to disadvantaged businesses (such as Tribally-owned businesses) through a grant recipient’s purchases and procurements. The fair share policy ensures disadvantaged businesses get their fair share of federally funded projects.

When a Tribal Nation accepts an assistance agreement award, they agree to make a “good faith effort” to use disadvantaged businesses for at least a percentage of their procurement needs. The grant recipient must file a DBE report before the grant can be closed out, whether or not any DBEs receive the awarded grant funds.

negotiate “fair share” goals were revised. Information regarding this rule can be found at the following web site:

<http://www.epa.gov/osbp/grants.htm>. Since this was a new requirement for the tribes, EPA agreed to conduct a three-year phased-in approach. Full compliance was required by May 2011. Tribal Nations that have Performance Partnership Grants (PPGs) are exempt from this requirement.

The Disadvantage Business Enterprise program will be reviewed after seven years to evaluate its effectiveness. The information you share will help to make this program more effective.

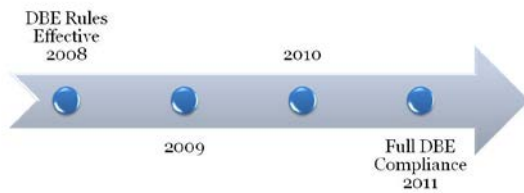
Learner Notes

Learner Notes

It is EPA’s policy that recipients of EPA financial assistance, under EPA grants, cooperative agreements, and interagency agreements, award a “fair share” of prime contracts or subagreements to disadvantaged businesses. This rule became effective on May 27, 2008 and had a three-year phase in period.

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The Phase in Period



How does this program affect our Tribal Nation?

The EPA Office of Small Business Programs instituted the “fair share policy”. The fair share policy requires Indian Tribes, U.S. Territories, and others who receive financial assistance from EPA to make “good faith efforts” to award a portion of their financial assistance procurement dollars to Disadvantaged Business Enterprises (DBEs). With the passage of the DBE rule on May 27, 2008, requirements on the Tribal Nations to

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_____ is defined as the acquisition through contract, order, purchase, lease, or barter of supplies, equipment, construction, or services needed to accomplish federal assistance program objectives.

- A. Contract
- B. Procurement
- C. Purchase
- D. Sole source
- E. None of the above



Contracts



A **contract** is:

- A mutually binding legal relationship
- Obligating the seller to furnish supplies or services (including construction) and
- Obligating the buyer to pay for them.

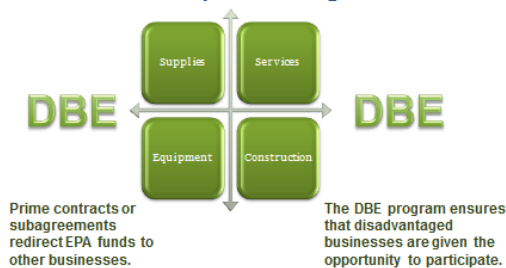
What does EPA call a “contract”?

A contract can be a procurement contract under a grant or subgrant or a procurement subcontract under a contract. A **contract** is a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and obligating the buyer to pay for them. It includes all types of commitments to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing.

In addition to bilateral instruments, contracts include (but are not limited to):

- Awards and notices of awards
- Job orders or task orders issued under basic ordering agreements
- Letter contracts
- Orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance
- Bilateral contract modifications

The Disadvantaged Business Enterprise Program



Disadvantaged Business Enterprises (DBEs)

What is the Disadvantaged Business Enterprise (DBE) program?

It is EPA's policy that recipients of EPA financial assistance, under all EPA grants, cooperative agreements, and interagency agreements, award a "fair share" of prime contracts or subagreements to disadvantaged businesses. Prime contracts or subagreements redirect EPA funds to other businesses.

The DBE program ensures that disadvantaged businesses are given the opportunity to participate. Recipients of EPA assistance agreement awards are required to make "good faith efforts" to seek out and utilize DBEs for all their procurement needs.

When the recipient accepts an award, it agrees to comply with the requirements of EPA's Program for Utilization of Minority and Women's Business Enterprises in procurement under assistance agreements as stipulated in 40 CFR Subchapter B, Part 33, Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs, available at <http://ecfr.gpoaccess.gov> and in the **Appendix**.

Disadvantaged Business Enterprises

DBEs include:

- Women-owned Business Enterprises (WBEs) and
- Minority Business Enterprises (MBEs), such as:
 - Native American-owned Businesses
 - Small Business Enterprises (SBEs)
 - Small Businesses in Rural Areas (SBRAs)
 - Labor Surplus Area Firms (LSAFs)
 - Historically Underutilized Businesses (HUB Zone)
 - Veteran-owned Businesses
 - And more...

Which businesses qualify as disadvantaged?

These entities are owned and/or controlled by 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. If a business is not certified as a Women Business Enterprise (WBE) or Minority Business Enterprise (MBE) then it cannot be considered when reporting procurement dollars spent.

The Buy Indian Act

- EPA encourages the procurement of goods and services through:
 - Native American-owned Businesses
 - Businesses owned by American Indians or others having a Tribal enrollment number
 - Minority-owned Business Enterprises (MBE)
 - Women-owned Business Enterprises (WBE)

Why should our Tribal Nation consider using Disadvantaged Business Enterprises (DBE)?

Most DBEs are small businesses. Encouraging recipients to use DBEs helps smaller businesses compete with more established and better financed operations so that the country maintains an interesting and diverse group of competitors from which to buy products or services. Using DBEs increases the pool of available and qualified vendors and contractors. It ensures opportunities are spread equitably.

The Buy Indian Act (Title 48 of the Federal Acquisition Regulations System, Part 370 special Programs Affecting Acquisition, Section 370.5) encourages the use of Native American-owned businesses. Businesses owned by American Indians qualify as DBEs in many different ways:

- Businesses owned by American Indians or others having a Tribal enrollment number are minority owned businesses (MBE).
- Some of the businesses are also owned by women (WBE).

A major goal of any Tribal government is employment of its Tribal members. EPA encourages the use of grant funds within the Tribal Nation by procuring goods and services through Native American-owned businesses. Some Nations already have policies that mandate the hiring of Tribal businesses whenever possible. When Native American-owned businesses are not available, the use of other disadvantaged business enterprises is encouraged.

Who qualifies as a Disadvantaged Business Enterprise (DBE)?

- A. Small businesses in rural and urban areas
- B. Historically underutilized businesses
- C. Businesses owned by women
- D. Businesses owned by minorities
- E. All of the above



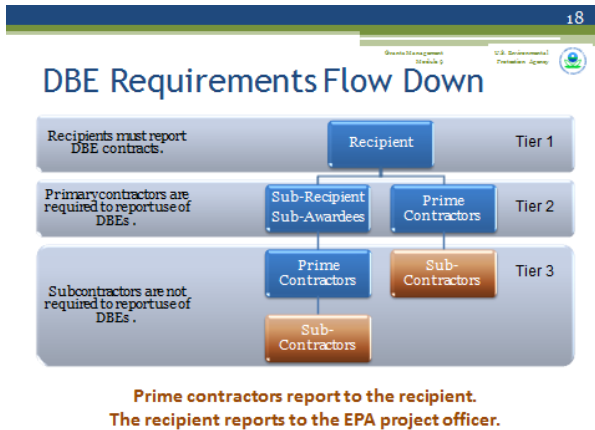
DBE program requirements are effective the date the assistance award is signed.



How does the DBE program impact our project?

The ten EPA regional offices work with states, Tribal Nations, U.S. Territories, and other recipients to ensure that this policy is implemented. DBE program “terms and conditions” are incorporated into all assistance agreements, and affect all four procurement categories (i.e., services/contractual, supplies, equipment, and construction).

DBE program requirements are effective the date the assistance award is countersigned, or at the beginning of the project period, not when expenditures are made.



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- DBE “Terms and Conditions”
- Tribal Nations are required to comply with:
 - Title 40 of the Code of Federal Regulations (40 CFR) Protection of Environment
 - Part 33 Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs
 - Subpart C, Good Faith Efforts

Are contracted businesses required to follow the DBE rule?

The DBE program requirements “flow down” from the EPA award recipient to sub-recipients, sub-awardees, and prime contractors.

- DBE reporting requirements do not flow past the primary contractor level.
- DBE primary contractors are required to use DBEs whenever possible.
- Sub-contractors who work for the prime contractor are not subject to EPA DBE requirements. Although the prime contractor may have a subcontractor whom they report on, only grant recipients and prime contractors are required to report on their contracting, DBE or otherwise.

Tier 1 and 2 requirements include:

- Negotiation of fair share objectives
- Availability analysis
- Application of objectives
- Use of good faith efforts
- Contract administration provisions
- Bidders list
- Documentation
- Submission of DBE reports
- Passing the DBE requirements to its sub-recipients, loan recipients, and prime contractors

Tier 3 requirements include:

- Application of fair share objectives
- Use of good faith efforts
- Documentation
- Submission of DBE reports
- Contract administration provisions

Prime contractors report to the recipient. The recipient reports to the EPA Project Officer.

Six Good Faith Efforts

Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?

The terms and conditions contained in EPA financial assistance agreements require the Tribal Nation to make good faith efforts to locate and use disadvantaged business enterprises.

Title 40 of the Code of Federal Regulations (40 CFR), Protection of Environment, Part 33, Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs, Subpart C, Good Faith Efforts, Item 33.304 states:

(a) A Native American (either as an individual, organization, corporation, Tribe or Tribal Government) recipient or prime contractor must follow the six good faith efforts only if doing so would not conflict with existing Tribal or Federal law, including but not limited to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e), which establishes, among other things, that any federal contract, subcontract, grant, or subgrant awarded to Indian organizations or for the benefit of Indians, shall require preference in the award of subcontracts and subgrants to Indian organizations and to Indian-owned economic enterprises.*

(b) Tribal organizations awarded an EPA financial assistance agreement have the ability to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six

good faith efforts. Tribal governments with promulgated tribal laws and regulations concerning the solicitation and recruitment of Native-owned and other minority business enterprises, including women-owned business enterprises, have the discretion to utilize these tribal laws and regulations in lieu of the six good faith efforts. If the effort to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts. All tribal recipients still must retain records documenting compliance in accordance with §33.501 and must report to EPA on their accomplishments in accordance with §33.502.

(c) Any recipient, whether or not Native American, of an EPA financial assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises are not successful, then the recipient must follow the six good faith efforts.

(d) Native Americans are defined in §33.103 to include American Indians, Eskimos, Aleuts and Native Hawaiians.

*The complete Indian Self-Determination and Education Assistance Act is available at http://www.law.cornell.edu/uscode/25/usc_sup_01_25_10_14_20_II.html.

40 CFR Part 33 is provided in the [Appendix](#).



SBA is the U.S. Small Business Administration. MBDA is the Minority Business Development Agency.

What purpose is served by the six good faith efforts?

The “good faith efforts” are methods required to be implemented by all EPA financial assistance agreement recipients to ensure that disadvantaged business enterprises (DBEs) have the opportunity to compete for procurements funded by EPA financial assistance dollars. Procurement includes all expenses whether accomplished through contracts, subcontracts, loans, and subawards, space and equipment leased or purchased outright for construction, equipment, supplies, and services.

EPA’s “Six Good Faith Efforts” offer a more current version of the “Six Affirmative Steps” and the “Six Positive Efforts” which you may already be familiar with. The good faith efforts are methods required by EPA in 40 CFR Part 33. A Tribal Nation remains compliant as long as it makes a “good faith effort” to apply the six affirmative steps outlined by the EPA.

40 CFR Part 33 is provided in the [Appendix](#).

What are the six good faith efforts?

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Tribal Nations, 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

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- 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 Tribal Nations, 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 U.S. Small Business Administration, Office of Native American Affairs (<http://www.sba.gov/aboutsba/sbaprograms/naa/index.html>) and the Department of Commerce, Minority Business Development Agency (<http://www.mbda.gov/>). (Some Nations only allow Tribally owned and/or Tribally approved subcontractors. Check your Tribal Nation's policy to determine which Tribal businesses are eligible.)
 6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (1) through (5) of this section.

***Make the Six Good Faith Efforts part of your policies and procedures.
Make them a part of your daily business routine.***



Learner Notes

Learner Notes

Understanding the Six Good Faith Efforts is the first step toward DBE outreach. Take a few minutes to get together at your table to do **Activity 9.a** (found online at www.petetribal.org). Share interpretations and clarify any confusion.

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Quality Management
Standards
U.S. Environmental
Protection Agency

Outreach Never Stops

- The six steps constitute:
 - Outreach
 - Recruitment
 - Other race/gender neutral activities
- EPA does not believe it is appropriate for these activities to be discontinued by a recipient merely because it reaches the DBE goals early.

Do we have to continue to comply with the six steps after reaching the goals set forth in the assistance agreement award?

Yes, the six steps constitute outreach, recruitment, and other race/gender neutral activities. EPA does not believe it is appropriate for these activities to be discontinued by a recipient merely because it reaches the DBE goals early.

Compliance

- If EPA finds out after the contract has been awarded to the prime contractor that it has not complied with the six steps,
- EPA can suspend or terminate the recipient's award or withhold payments to the grant recipient until it takes corrective action.

What happens if a prime contractor does not comply with the six steps?

The prime contractor needs to show that they are compliant with the good faith efforts. A big part of complying with good faith efforts (i.e., outreach to DBEs and breaking large contracts into smaller, more manageable sized contracts) is done before the grant is awarded. Additional compliance consideration is done after the contract is awarded and when a prime contractor determines they need to subcontract the work.

Compliance is the bidders' responsibility. The prime needs to be made aware of their requirements to the DBE rule. If EPA finds out after the contract has been awarded to the prime contractor that it has not complied with the six steps, EPA can suspend or terminate the recipient's award or withhold payments to the grant recipient until it takes corrective action.

recipients of an EPA financial assistance agreement that award contracts to create and maintain a bidders list. Contact information for businesses in the market region is listed and kept current (checked annually at least). Businesses should be arranged alphabetically and by the equipment and service provided. The bidders list simplifies the process of finding eligible and available vendors when needed.

Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund agree to 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. See 40 CFR, Part 33, Section 33.501(b) and (c) for specific requirements and exemptions.

A more complete sample bidders list is provided in *Activity 9.c*, located at www.petetribal.org.

How do we use the list of eligible businesses?

The purpose of a bidders list is to provide the most accurate information possible about businesses when conducting competitive bidding.

EPA requires:

- A recipient of any EPA assisted project must include all firms that bid or quote on prime contracts or subcontracts in a bidders list.
- 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.

How long do we keep the bidders list?

The 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?

- Entity's name with point of contact

Maintain a Bidders List

Company Name	Bidder	Procurement	Date	Certification
Quality Construction 987 Main Street Somewhere, ST 98765 1.800.555.9786 Quality@tbc.com <small>(This is a fictitious company for example only.)</small>	Quality Construction	Construction Equipment	01/10/2012	DBE, MBE, Tribal Tribal qualifies as MBE on DBE forms
Company Name Address City, State Zip Phone Email				

Bidders List

What is a bidders list?

The list of eligible businesses, both DBE and non-DBE, created by the Tribal Nation is called a "bidders list". The "new" DBE rule requires

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- Entity's mailing address, telephone number, and email address
- The procurement on which the entity bid or quoted
- Date when the bid or quote is made
- Entity's status as a DBE



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Bidders List Exceptions

- EPA award totals \$250,000 or less
- Two or more awards totals \$250,000 or less
- The following loans total \$250,000 or less:
 - Clean Water State Revolving Fund
 - Drinking Water State Revolving Fund
 - Brownfields Cleanup Revolving Loan Fund

\$250,000 or less

What are the exemptions to 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 Clean Water State Revolving Fund, Drinking Water State Revolving Fund, or Brownfields Cleanup Revolving Loan Fund 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. Good faith efforts and reporting will always be required with an EPA assistance agreement regardless of the funding amount.

Discussion

Discussion

- Do you have written good faith effort or affirmative action policies?
- How do you provide procurement for subcontractors?
- How do you maintain your subcontractor bidders list?

Learner Notes

This is a good time to share information on how you collect, record, and maintain contractor information. Discuss the questions above. Then try **Activity 9.b** (online at www.petetribal.org).

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DBE Certification

- DBE s must be certified in order to be counted toward a recipient's DBE accomplishments.
- Accomplishments are the DBE procurements reported on the EPA Form 5700-52A.

Disadvantaged Business Enterprise (DBE) Certification

What are DBEs?

An organization may apply for disadvantaged business enterprise certification, if it is owned by a majority of individuals with any of the following qualifications.

Disadvantaged Business Enterprises (DBEs) include:

- Women Business Enterprises (WBEs)

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- Minority Business Enterprises (MBEs)
- Native American-owned Business
- Small Business Enterprise (SBE)
- Small Business in a Rural Area (SBRA)
- Labor Surplus Area Firm (LSAF)
- Historically Underutilized Business (HUBZone)
- Other entities meeting EPA's DBE Rule criteria

These entities are owned and/or controlled by 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. EPA does check to be sure DBEs are valid and certified minority or women-owned businesses. The Inspector General will investigate suspicious certifications.

DBEs must be certified in order to be counted toward a recipient's DBE accomplishments.

What are the EPA DBE certification requirements?

To qualify as a DBE under EPA programs an entity must establish that it is **at least 51 percent 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.

How does certification affect a firm's participation in the overall DBE program?

In order for a firm to be counted towards a recipient's Disadvantaged Business Enterprise utilization, a firm must be certified. Non-certified DBEs may be used by recipients for their procurement needs. However, those firms cannot be counted toward the Tribal Nation's DBE accomplishments.

Only minority and women business enterprises are reported on EPA Form 5700-52A. If a business is not certified as a MBE/WBE then it cannot be considered when reporting procurement dollars spent. DBE Program outreach efforts, however, apply to all disadvantaged businesses not just minority and women business enterprises. Tribal businesses certified as minority or women business enterprises count toward DBE Program outreach and reporting requirements.

Who is responsible for certifying DBE firms?

In order to be certified and count toward a recipient's DBE accomplishments, a business must first attempt to be certified by the U.S. Small Business Administration (SBA) or Department of Transportation (DOT). If neither of those organizations agree to certify the business, it can request certification from other agencies. Asking EPA for certification should be used only when all other attempts have been unsuccessful.

If a business is denied certification by both of these organizations, it may apply for EPA certification. However, EPA certification is only valid for EPA programs, whereas SBA and DOT certification are applicable to many different federal programs. EPA Office of Small Business Programs (OSBP) headquarters in Washington, D.C. is responsible for implementing and processing applications for DBE certification from EPA. Regional DBE coordinators will assist by providing forms to interested firms and fielding general questions.

If a grant recipient is working with a business that is eligible for certification, it should recommend the business contact the following agencies in the order given.

1. Small Business Administration (SBA) certifies businesses as Minority Business Enterprises (MBE) and Women Business Enterprises (WBE).
2. Department of Transportation (DOT) certifies businesses as Disadvantaged Business Enterprises (DBE).
3. Other agencies certify under these and additional categories.
4. EPA certifies businesses only when a business is previously denied certification by the DOT and SBA.

The states and Tribal Nations have no responsibility to implement or maintain a certification program for EPA.

Certifying Agencies



How do DBEs get certified?

DBEs must be certified by one of the following federal offices:

- Small Business Administration (SBA) (U.S. citizenship required)*
- Department of Transportation (DOT) (U.S. citizenship required)
- Environmental Protection Agency (EPA) (if first rejected by another source)

* Even when SBA allows self-certification, EPA accepts SBA standards.

Non-federal certification alternatives include:

- Tribal Employment Rights Office (TERO)
- State governments**
- Local governments
- Tribal governments
- Private entities

*Non-federal criteria must meet or exceed EPA standards for certification.

**States are not required to develop or implement a new certification program.

The certification process can take as much as four months to complete. Certification lapses can occur. Check certification status before signing the contract. Certifications are typically renewed every three to eight (3-8) years depending on the certifying agency.

If an entity holds one of these certifications, it is considered acceptable for establishing DBE status under EPA’s DBE Program, and application for EPA certification is not needed. EPA can certify entities; however, they must first be rejected by another source before seeking EPA certification. EPA certification is not accepted by any agency other than the EPA.

How do DBEs get EPA certified?

An EPA DBE Certification Application form can be downloaded from http://www.epa.gov/osbp/pdfs/dbe/cert_form_tribes%20.pdf.

The most versatile and highly-recognized business certifications come from the SBA and DOT. An entity can check its certification status with the SBA through their online database.

Keep a copy of the certification letter on file.



EPA DBE Certification Process

- The application includes the following:
 - Sworn affidavit
 - Proof of DBE status
 - Documentation of a denial of certification by other federal agencies



What does the EPA certification process entail?

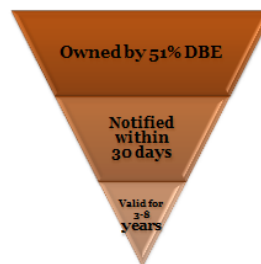
Applications are filed with the EPA’s Office of Small Business Programs (OSBP). Applications can be obtained from EPA OSBP, from regional DBE Coordinators, and from EPA OSBP’s website, http://www.epa.gov/osbp/dbe_team.htm.

The application includes the following:

- An attestation to the accuracy and truthfulness of the information on the application form by sworn affidavit, or an unsworn declaration executed under penalty of perjury of the laws of the United States
- Evidence demonstrating that the entity is owned and/or controlled by one or more individuals claiming disadvantaged status, along with certifications or narratives regarding the disadvantaged status of such individuals
- Documentation of a denial of certification by a federal agency, state government, local government, Tribal government, or independent private organization, if applicable



DBE Certification Qualifications



EPA Office of Small Business Programs (OSBP) will make its certification decision within 30 days of receipt of a complete and suitable application package.

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Once applications are filed, EPA OSBP will advise each applicant within 15 days, whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

EPA Office of Small Business Programs (OSBP) will make its certification decision within 30 days of receipt of a complete and suitable application package.

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Who can certify a business as disadvantaged?

- A. Federal agencies such as the SBA and DOT
- B. State, local, and Tribal governments
- C. Independent and private entities such as TERO
- D. The Environmental Protection Agency
- E. All of the above



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DBEs are companies owned or controlled by at least ____ socially and economically disadvantaged individuals.

- A. 11%
- B. 25%
- C. 51%
- D. 75%
- E. All of the above



Learner Notes

Learner Notes

Please note that the terms "DBE" and "MBE/WBE" are used interchangeably throughout the manual. However, it is important to recognize two areas where there are distinctions between the two terms.

1. For the purposes of reporting MBE/WBE utilization on EPA Form 5700-52A, ONLY certified MBE/WBEs can be counted towards your utilization in the areas where the form requests that information. While Small Business Enterprises (SBEs); Small Businesses in a Rural Areas (SBRAs); Labor Surplus Area Firms (LSAFs); and Historically Underutilized Business (HUB) Zone Small Business Concerns, are DBEs, they MUST NOT be included when reporting your accomplishments under the program on EPA Form 5700-52A.
2. It is also important to recognize the distinction between "DBE" and "MBE/WBE" when calculating your fair share objectives. Fair share objectives are ONLY negotiated for MBE/WBEs...NOT for the other categories of DBEs stated above.

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DBE Reporting

- All recipients, including Tribal Nations and U.S. Territories, must report DBE procurements.
 - Check the "terms and conditions" of your award for the reporting schedule.
 - Fill out EPA Form 5700-52A.
 - Mail it to your regional DBE Coordinator.

Disadvantaged Business Enterprise (DBE) Reporting

What is DBE reporting?

All recipients, including Tribal Nations and U.S. Territories, must report DBE (minority business enterprise (MBE) and women business enterprise (WBE)) accomplishments on EPA Form 5700-52A. Fill out the form and mail to your regional DBE Coordinator.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Programs at http://www.epa.gov/osbp/pdfs/5700_52a.pdf. A copy is also provided in the [Appendix](#).

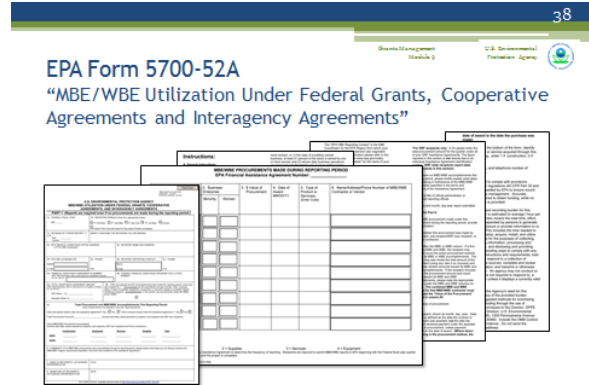
Reporting times may vary by type of assistance. Most Tribal Nations report on an annual or semi-annual basis (i.e., twice per year), even those who were previously required to report quarterly.

If time is short, EPA can now accept facsimile (fax) and emailed portable document format (PDF) copies of forms. Print, complete, sign and date the form; then fax or email it to the appropriate EPA contact by the due date as stated in the “terms and conditions” of the award. Do send a paper copy too.

The following recipients report on an annual basis:

- Recipients of Continuing Environmental Program Grants under 40 CFR Part 35, Subpart A;
- Recipients under 40 CFR Part 35, Subpart B;
- General Assistance Program (GAP) grants for tribal governments and intertribal consortia; and
- Institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements under 40 CFR Part 30

Please check the “terms and conditions” of your award or contact your EPA regional office for details.



A copy of EPA Form 5700-52As provided in the [Appendix](#).

An example of a completed EPA Form 5700-52A is provided on the next few pages.



Purpose of DBE Reporting

- The purpose of DBE reporting is to monitor the grant recipient's:
 - Accomplishments in utilizing DBEs
 - Adherence to the “good faith efforts”
 - Progress in achieving DBE “fair share” objectives

What is the purpose of DBE reporting?

The purpose of DBE reporting is to monitor the grant recipient's:

- Accomplishments in utilizing DBEs
- Adherence to the good faith efforts (i.e., outreach to MBEs, WBEs, and other DBEs)
- Progress in achieving DBE fair share objectives

For example, “terms and conditions” might specify:

The Tribal Nation agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period we receive the award, and continuing until the project is completed. Only procurements with certified DBEs are counted toward DBE accomplishments.

Module 9: Disadvantaged Business Enterprises (DBEs)

The reports must be submitted semiannually for the periods ending March 31st and September 30th for:
Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and
All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 33, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to (enter appropriate regional information). Final DBE reports must be submitted within 90 days after the project period of the grant ends. The grant cannot be officially closed without all DBE reports.

What are the grant recipient's responsibilities for DBE reporting?

It is the responsibility of the EPA grant recipient to complete and submit the DBE report to EPA.

The prime contractors, sub-recipients, and loan recipients provide data to the Tribal Nation for procurement expenditures and objectives under the EPA assistance agreement for each reporting period.

The Tribal Nation completes and submits EPA Form 5700-52A:

- For each reporting period
- At a frequency specified in the grant agreement
- To the appropriate EPA office and personnel
- As identified in their financial assistance agreement

The current form can be downloaded from <http://www.epa.gov/osbp/grants.htm>. A copy is also provided in the **Appendix** of this manual.

Module 9: Disadvantaged Business Enterprises (DBEs)

OMB CONTROL NO: 2090-0030
 APPROVED: 05/01/2008
 APPROVAL EXPIRES: 01/22/2013

**U.S. ENVIRONMENTAL PROTECTION AGENCY
 MBE/WBE UTILIZATION UNDER FEDERAL GRANTS,
 AND COOPERATIVE AGREEMENTS**

PART 1. (Reports are required even if no procurements are made during the reporting period.)

1A. FEDERAL FISCAL YEAR <i>2011</i>		1B. REPORTING PERIOD (Check ALL appropriate boxes) <input type="checkbox"/> 1 st (Oct-Dec) <input type="checkbox"/> 2 nd (Jan-Mar) <input type="checkbox"/> 3 rd (Apr-Jun) <input type="checkbox"/> 4 th (Jul-Sep) <input type="checkbox"/> Semi-Annual(Oct-Mar) <input type="checkbox"/> Semi-Annual (Apr-Sep) <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Check if this is the last report for the project (Project completed).																			
1C. REVISION OF A PRIOR REPORT? Y or N Year: _____ Quarter: _____		BRIEFLY DESCRIBE THE REVISIONS YOU ARE MAKING: <i>NA (not applicable)</i>																			
2A. EPA FINANCIAL ASSISTANCE OFFICE ADDRESS (ATTN: DBE Coordinator) <i>Office for Civil Rights and Environmental Justice CEJ-987 4343 Main St. Somewhere, ST 98765 555.987.6543</i>		3A. RECIPIENT NAME AND ADDRESS <i>Tribe 1234 Rural Route 2 Somewhere, ST 12345</i>																			
2B. EPA DBE COORDINATOR Name: <i>Linda Forest</i> E-mail: <i>lforest@epa.gov</i>	2C. PHONE: <i>555.987.6543</i> Fax: <i>555.987.6565</i>	3B. RECIPIENT REPORTING CONTACT: Name: <i>Jane Doe, Project Manager</i> E-mail: <i>jdoe@tribe.org</i>	3C. PHONE: <i>555.666.9898</i> Fax: <i>555.666.9899</i>																		
4A. FINANCIAL ASSISTANCE AGREEMENT ID NUMBER (SRF State Recipients, refer to Instructions for Completion of blocks 4A, 5A and 5C.) <i>US-12345678-0</i>		4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM TITLE or CFDA NUMBER: <i>66.418 – Construction Grants for Waste Water Treatment Works</i>																			
5A. TOTAL ASSISTANCE AGREEMENT AMOUNT (SRF State Recipients, refer to Instructions for Completion of blocks 4A, 5A and 5C.) EPA Share: <i>\$2,000,000</i> Recipient Share: <i>\$10,220,429</i>		5B. If NO procurement and NO accomplishments were made this reporting period, check, and skip to Block No. 7. (Procurements are all expenditures through contract, order, purchase, lease, or barter of supplies, equipment, construction, or services needed to complete Federal assistance programs. Accomplishments, in this context, are procurements made with MBEs and/or WBEs.)																			
5C. Total Procurement and MBE/WBE Accomplishments This Reporting Period (Only include amount not reported in any prior reporting period) Were sub-awards issued under this assistance agreement? Yes <input checked="" type="checkbox"/> No _____ Were contracts issued under this assistance agreement? Yes <input checked="" type="checkbox"/> No _____ Total Procurement Amount <u><i>\$19,843</i></u> (Include total dollar values awarded by recipient, sub-recipients, and SRF loan recipients.) Actual MBE/WBE Procurement Accomplished: (Include total dollar values awarded by recipient, sub-recipients, SRF loan recipients, and Prime Contractors.)																					
		<table border="1"> <thead> <tr> <th></th> <th><u>Construction</u></th> <th><u>Equipment</u></th> <th><u>Services</u></th> <th><u>Supplies</u></th> <th><u>Total</u></th> </tr> </thead> <tbody> <tr> <td>MBE:</td> <td><i>\$13,510</i></td> <td>_____</td> <td>_____</td> <td>_____</td> <td><i>\$13,510</i></td> </tr> <tr> <td>WBE:</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td><i>\$0</i></td> </tr> </tbody> </table>			<u>Construction</u>	<u>Equipment</u>	<u>Services</u>	<u>Supplies</u>	<u>Total</u>	MBE:	<i>\$13,510</i>	_____	_____	_____	<i>\$13,510</i>	WBE:	_____	_____	_____	_____	<i>\$0</i>
	<u>Construction</u>	<u>Equipment</u>	<u>Services</u>	<u>Supplies</u>	<u>Total</u>																
MBE:	<i>\$13,510</i>	_____	_____	_____	<i>\$13,510</i>																
WBE:	_____	_____	_____	_____	<i>\$0</i>																
6. COMMENTS: (If no MBE/WBE procurements were accomplished during the reporting period, please explain what steps you are taking to achieve the MBE/WBE Program requirements specified in the terms and conditions of the Assistance Agreement.) <i>NA</i>																					
7. NAME OF RECIPIENT'S AUTHORIZED REPRESENTATIVE <i>James Stone</i>		TITLE <i>President, Tribal Leader's Council</i>																			
8. SIGNATURE OF RECIPIENT'S AUTHORIZED REPRESENTATIVE <i>James Stone</i>		DATE <i>11/30/2011</i>																			

Figure 1: EPA Form 5700-52A page 1

Module 9: Disadvantaged Business Enterprises (DBEs)

MBE/WBE PROCUREMENTS MADE DURING REPORTING PERIOD
EPA Financial Assistance Agreement Number: US-12345678-0

1. Procurement Made By			2. Business Enterprise		3. \$ Value of Procurement	4. Date of Award (MM/DD/YY)	5. Type of Product or Services (Enter Code)	6. Name/Address/Phone Number of MBE/WBE Contractor or Vendor
Recipient	Sub-Recipient and/or SRF Loan Recipient	Prime	Minority	Women				
			X		\$13,510	08/23/2011	1	Estes Construction P.O. Box 9876 Simpleton, ST 98765 555.777.7243 Estes.construction@tbc.com

Type of product or service codes:

1 = Construction

2 = Supplies

3 = Services

4 = Equipment

Note: Refer to Terms and conditions of your Assistance Agreement to determine the frequency of reporting. Recipients are required to submit MBE/WBE reports to EPA beginning with the Federal fiscal year quarter the recipients receive the award, continuing until the project is completed.

Figure 2: EPA Form 5700-52A page 2

Instructions:

A. General Instructions:

MBE/WBE utilization is based on 40 CFR Part 33. EPA Form 5700-52A must be completed by recipients of Federal grants, cooperative agreements, or other Federal financial assistance which involve procurement of supplies, equipment, construction or services to accomplish Federal assistance programs.

Recipients are required to report 30 days after the end of each federal fiscal quarter, semiannually, or annually, per the terms and conditions of the financial assistance agreement.

	Quarterly Reporting Due Date	Semiannual Reporting Due Date	Annual Reporting Due Date
Agreements awarded prior to May 27, 2008	January 30, April 30, July 30, October 30	N/A	October 30
Agreements awarded on or after May 27, 2008	N/A	April 30, October 30	October 30

MBE/WBE program requirements, including reporting, are material terms and conditions of the financial assistance agreement.

B. Definitions:

Procurement is the acquisition through contract, order, purchase, lease or barter of supplies, equipment, construction or services needed to accomplish Federal assistance programs.

A **contract** is a written agreement between an EPA recipient and another party (also considered “prime contracts”) and any lower tier agreement (also considered “subcontracts”) for equipment, services, supplies, or construction necessary to complete the project. This definition excludes written agreements with another public agency. This definition includes personal and professional services, agreements with consultants, and purchase orders.

A **minority business enterprise (MBE)** is a business concern that is (1) at least 51 percent owned by one or more minority individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more of the minority owners. In order to qualify and participate as an MBE prime or subcontractor for EPA recipients under EPA’s DBE Program, an entity must be properly certified as required by 40 CFR Part 33, Subpart B.

U.S. citizenship is required. Recipients shall presume that minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or other groups whose members are found to be disadvantaged by the Small Business Act or by the Secretary of Commerce under section 5 of Executive order 11625. The reporting contact at EPA can provide additional information.

A **woman business enterprise (WBE)** is a business concern that is, (1) at least 51 percent owned by one or more women, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more women and (2) whose daily business operations are managed and directed by one or more of the women owners. In order to qualify and participate as a WBE prime or

Module 9: Disadvantaged Business Enterprises (DBEs)

subcontractor for EPA recipients under EPA's DBE Program, an entity must be properly certified as required by 40 CFR Part 33, Subpart B.

Business firms which are 51 percent owned by minorities or women, but are in fact managed and operated by non-minority individuals do not qualify for meeting MBE/WBE procurement goals. U.S. Citizenship is required.

Good Faith Efforts

A recipient is required to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under an EPA financial assistance agreement. These good faith efforts for utilizing MBEs and WBEs must be documented. Such documentation is subject to EPA review upon request:

1. Include of MBEs/WBEs on solicitation lists.
2. Assure that MBEs/WBEs are solicited once they are identified.
3. Divide total requirements into smaller tasks to permit maximum MBE/WBE participation, where feasible.
4. Establish delivery schedules which will encourage MBE/WBE participation, where feasible.
5. Encourage use of the services of the U.S. Department of Commerce's Minority Business Development Agency (MBDA) and the U.S. Small Business Administration to identify MBEs/WBEs.
6. Require that each party to a subgrant, subagreement, or contract award take the good faith efforts outlined here.

C. Instructions for Part I:

- 1a. Specify Federal fiscal year this report covers. The Federal fiscal year runs from October 1st through September 30th (**e.g. November 29, 2010 falls within Federal fiscal year 2011**)
- 1b. Check applicable reporting box, quarterly, semiannually, or annually. Also indicate if this is the last report for the project.
- 1c. Indicate if this is a revision to a previous year, half-year, or quarter, and provide a brief description of the revision you are making.
- 2a-c. Please refer to your financial assistance agreement for the mailing address of the EPA financial assistance office for your agreement.

The "EPA DBE Reporting Contact" is the DBE Coordinator for the EPA Region from which your financial assistance agreement was originated. For a list of DBE Coordinators please refer to the EPA OSBP website at www.epa.gov/osbp. Click on "Regional Contacts" for the name of your coordinator.

- 3a-c. Identify the agency, state authority, university or other organization which is the recipient of the Federal financial assistance and the person to contact concerning this report.
- 4a. Provide the Assistance Agreement number assigned by EPA. A separate report must be submitted for each Assistance Agreement.

***For SRF recipients:** In box 4a list numbers for ALL OPEN Assistance Agreements being reported on this form. Please note that although the New DBE Rule (which took effect May

Module 9: Disadvantaged Business Enterprises (DBEs)

27, 2008) revised the reporting frequency requirements from quarterly to semiannually, that change only applies to agreements awarded AFTER the New DBE Rule took effect. Therefore, SRF recipients may either continue to report activity for all Agreements on one form on a quarterly basis until the last award that was made prior to the New DBE Rule has been closed out; OR, the recipient may split the submission of SRF reports into quarterly reports for Agreements awarded prior the New DBE Rule, and semiannually for the awards made after the New DBE Rule.

4b. Refer back to Assistance Agreement document for this information.

5a. Provide the total amount of the Assistance Agreement which includes Federal funds plus recipient matching funds and funds from other sources.

***For SRF recipients only:** SRF recipients will not enter an amount in 5a. Please leave 5a blank.

5b. Self-explanatory.

5c. Provide the total dollar amount of **ALL** procurements awarded this reporting period by the recipient, sub-recipients, and SRF loan recipients, **including** MBE/WBE expenditures. For example: Actual dollars for procurement from the procuring office; actual contracts let from the contracts office; actual goods, services, supplies, etc., from other sources including the central purchasing/ procurement centers).

***NOTE:** To prevent double counting on line 5C, if any amount on 5E is for a subcontract and the prime contract has already been included on Line 5C in a prior reporting period, then report the amount going to MBE or WBE subcontractor on line 5E, but exclude the amount from Line 5C. To include the amount on 5C again would result in double counting because the prime contract, which includes the subcontract, would have already been reported.

5d. State whether or not sub-awards and/or subcontracts have been issued under the assistance agreement by indicating "yes" or "no".

5e. Where requested, also provide the total dollar amount of all MBE/WBE procurement awarded during this reporting period by the recipient, sub-recipients, SRF loan recipients, and prime contractors in the categories of construction, equipment, services and supplies. These amounts include Federal funds plus recipient matching funds and funds from other sources.

***For SRF recipients only:** In 5c please enter the total procurement amount for the quarter, or semiannual period, under all of your SRF Assistance Agreements. The figure reported in this section is **not** directly tied to an individual Assistance Agreement identification number. **(SRF state recipients report state procurements in this section)**

6. If there were no MBE/WBE accomplishments this reporting period, please briefly explain what specific steps you are taking to achieve the MBE/WBE requirements specified in the terms and conditions of the Assistance Agreement.

7. Name and title of official administrator or designated reporting official.

8. Signature, month, day, and year report submitted.

D. Instructions for Part II:

For each MBE/WBE procurement made under this assistance agreement during the reporting period, provide the following information:

Module 9: Disadvantaged Business Enterprises (DBEs)

1. Check whether this procurement was made by the recipient, sub-recipient/SRF loan recipient, or the prime contractor.
2. Check either the MBE or WBE column. If a firm is both an MBE and WBE, the recipient may choose to count the entire procurement towards EITHER its MBE or WBE accomplishments. The recipient may also divide the total amount of the procurement (using any ratio it so chooses) and count those divided amounts toward its MBE and WBE accomplishments. If the recipient chooses to divide the procurement amount and count portions toward its MBE and WBE accomplishments, please state the appropriate amounts under the MBE and WBE columns on the form. **The combined MBE and WBE amounts for that MBE/WBE contractor must not exceed the "Value of the Procurement" reported in column #3**
3. Dollar value of procurement.
4. Date of procurement, shown as month, day, year. Date of procurement is defined as the date the contract or procurement was awarded, **not** the date the contractor received payment under the awarded contract or procurement, unless payment occurred on the date of award. **(Where direct purchasing is the procurement method, the date of procurement is the date the purchase was made)**
5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (e.g., enter 1 if construction, 2 if supplies, etc).
6. Name, address, and telephone number of MBE/WBE firm.

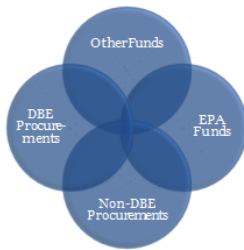
**This data is requested to comply with provisions mandated by: statute or regulations (40 CFR Part 30, 31, and 33); OMB Circulars; or added by EPA to ensure sound and effective assistance management. Accurate, complete data are required to obtain funding, while no pledge of confidentiality is provided.

The public reporting and recording burden for this collection of information is estimated to average 1 hour per response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclosure or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Include the OMB Control number in any correspondence. Do not send the completed form to this address.

Figure 42: EPA Form 5700-52A page 5

DBE Reporting Requirements



- DBE procurements must be reported by category and provider.
 - **Category:**
 - Construction
 - Supplies
 - Equipment
 - Services
 - **Provider:**
 - Minority-owned Business Enterprise
 - Women-owned Business Enterprise

What do we report?

Collect and retain document data on DBEs and total procurement expenditures made for the grant project up to the “Total Assistance Agreement Amount” (i.e., the project’s total budget).

Report the “total project amount”, including expenses:

- Funded by EPA
- Funded by other sources
- Made to all DBE businesses
- Made to non-DBE businesses

Report procurement expenditures from all sources [i.e., the EPA grants recipient, sub-recipients, loan recipients (and the prime contractors of all three entities)].

DBE procurements must be reported by:

- Category (construction, supplies, equipment, services), and
- Provider (Minority-owned Business Enterprise or Women-owned Business Enterprise).

Report Each EPA Project Separately

Wetlands Restoration	Air Quality Control	Brownfields Reclamation
EPA Form 5700-52A	EPA Form 5700-52A	EPA Form 5700-52A

How do we report?

Report dollar amounts for a single project only. Each award project requires a separate DBE report.

DBE Goals

- Goals are targets not quotas.
 - All expenses must be reported, no matter who pays for them.
 - A dollar amount of zero is acceptable when there was no DBE procurement.

What if there were no purchases?

Award projects where there were no DBEs utilized, or no procurement expenditures of any kind were made during the reporting period, must still submit “negative reports”. The information is required because the purpose of the reporting form is two-fold:

- It provides data on total expenditures made in the four procurement categories.
- It allows EPA to monitor the utilization of DBEs under its grants.

Why is DBE reporting required?

DBE reporting is required because EPA needs to track the use of DBEs. Data tells EPA if the program is working and whether DBEs are receiving the expected opportunities. EPA recognizes that there are circumstances in which a DBE might be awarded little or no procurement dollars during a given reporting period. What is important is that the grant recipients, sub-recipients, loan recipients, and prime contractors of these entities conduct and document outreach to DBEs.

Participation Counts

- DBEs must be certified in order to be counted toward a recipient’s accomplishments.
 - Ask your DBE Coordinator for the latest information on DBE certification.

What must be considered in counting DBE participation?

- DBEs must be officially certified, in order to claim/report them on EPA Form 5700-52A.
- DBEs may not act as brokers or passive conduits of funds.
- For example, a DBE trucker must serve a “commercially-useful” function.

Module 9: Disadvantaged Business Enterprises (DBEs)

- The amount counted towards a DBE prime contractor may not exceed 100 percent of contract value.
- To be claimed 100 percent DBE, a prime contractor who is a DBE may not sub-award more than 49 percent of its contract value to non-DBEs.

A copy of the DBE Certification Fact Sheet is provided in the [Appendix](#); however, this information is currently under revision. Ask your DBE Regional Coordinator for the latest information on DBE certification.

How is DBE reporting under revolving loan programs different?

EPA financial assistance recipients that capitalize revolving loan programs need only report “total procurement dollars” in the amount of loans equal or up to the capitalization grant amount. Entities receiving identified loans must submit their MBE/WBE participation reports/data to the EPA grant recipient (rather than to EPA). EPA financial assistance recipients that capitalize revolving loan programs must ensure that they receive procurement reports from revolving loan recipients in time to meet EPA’s DBE reporting deadlines.



Due Dates

- File EPA Form 5700-52A:
 - During the award period
 - By the 30th of April
 - By the 30th of October



How often are DBE reports due?

The required reporting frequency is listed in the “terms and conditions” of the award document or EPA’s annual letter containing grant terms and conditions. Submission dates are listed in paragraph #2 of the instructions accompanying EPA Form 5700-52A. Those grantees who previously reported quarterly now report semi-annually (by the 30th of April and October). All other grantees may continue to report annually.

Annual Reporters:

- Recipients of Continuing Environmental Program Grants under 40 CFR Part 35, Subpart A
- Recipients under 40 CFR Part 35, Subpart B
- General Assistance Program (GAP) grants for tribal governments and intertribal consortia
- Institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements under 40 CFR Part 30
- Annual reporters must submit their completed EPA Form 5700-52A to EPA within 30 days of the end of the annual reporting period (October 30th)

Semi-Annual Reporters:

- Recipients of financial assistance agreements that capitalize revolving loan funds; and
- All other recipients not specified as “annual reporters”.
- Semiannual reporters must submit their completed EPA Form 5700-52A to EPA within 30 days of the end of the semiannual reporting period (April 30th and October 30th).

Reports are required from project start to completion as stated in the assistance agreement. Reporting begins at the start of the project period, **not** from the point when the first procurement is made.

There is no “final” report at the end of the fiscal year. When you file the “final” or last report for the project, check the box on the form that states this is the last report submitted. Submit the last report as soon as possible, no later than 90 days after the project has expired.

DBE reports (completed EPA Form 5700-52A) are due by the 30th of April and October during the award period and a final form is due at closeout. Financial assistance awards cannot be closed without the submission of all required reports.

EPA requires a separate report for each individual grant applicable per reporting period.

You must submit a separate report for each federal grant. The authorized certifying official must sign the EPA Form 5700-52A.

EPA Form 5700-52A and a reporting check list are provided in the [Appendix](#).

Program Manual, available at http://www.epa.gov/osbp/dbe_team.htm. If you are still unsure about how to complete the report, contact the person to whom you mailed the report.

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DBE Regional Coordinator

- EPA Form 5700-52A reports must be:
 - Signed and dated,
 - Faxed, emailed, or mailed, and
 - Sent to the DBE Regional Coordinator.

7. NAME OF RECIPIENT'S AUTHORIZED REPRESENTATIVE	TITLE
8. SIGNATURE OF RECIPIENT'S AUTHORIZED REPRESENTATIVE	DATE

Where do we send the DBE report?
 Submit the EPA Form 5700-52A to the person identified in the “terms and conditions” of the grant agreement. This person will usually be the regional EPA Project Officer or DBE Coordinator. The award cannot be closed out until several key documents are filed, including the final DBE report. Do not send the form to headquarters if you are under the jurisdiction of a regional office.

Can we FAX or email the DBE report?
 EPA grant recipients must submit their completed DBE reports to the EPA regional DBE Coordinator. Be sure to have your authorized certifying official sign and date, then fax, mail, or email the form. Portable Document Format (PDF) versions are now accepted as legal documents by the federal government. Many scanners can create PDF versions of documents.

What if there are problems with a DBE report?
 If for some reason your report is overdue, contact your regional DBE coordinator.

If you realize later that a previously submitted report contained inaccurate, incomplete, or incorrect data, submit a “revised” report. For example, on EPA Form 5700-52A:

- In Block 1C circle the word “Yes” and enter the fiscal year for which the report is being corrected.
- Explain the reason for the revised report in the block next to Block 1C.

For further assistance in setting DBE goals and reporting accomplishments, refer to the DBE

Learner Notes

Learner Notes

While each region may have a DBE Regional Coordinator, each region also uses different procedures for processing grant forms. Award recipients should send reports to and correspond with the person named in the “terms and conditions” of your award document. If for any reason the “terms and conditions” do not specify a person, the report should be sent to the DBE Regional Coordinator or you may ask their Grants Specialist to identify to whom the report should be mailed.



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Dollar amounts reported on the DBE reporting form include:

- All non-grant procurements for the tribal nation
- All procurements for all EPA grant projects combined
- Just procurements for supplies and services
- All DBE and Non-DBE procurements for a single project
- None of the above

Learner Notes

Learner Notes

Federal forms can be confusing especially for first time grant recipients. This is a good time to practice filling out the forms, when there are others around to answer questions. Practice filling in the EPA Form 5700-52A in **Activity 9.c** (found online at www.petetribal.org).

Contracts, purchases, and sole source purchasing are all subsets of the overarching term of procurement.

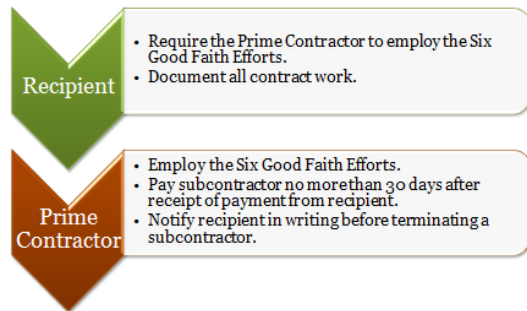
- **Contracts** involve signing of paperwork and incremental payments, supervision, and evaluation of work.
- **Purchases** are straight-forward payment for goods. You pay for it; you own it.
- **Sole source purchasing** means you agree in advance to purchase multiple items from a single business. This practice is not encouraged unless the sole source supplier is a DBE and/or the only business providing such service within your market region.

The DBE reporting form is signed by the:

- A. Contractor
- B. Sub-recipient
- C. Loan recipient
- D. EPA grantee
- E. All of the above



Contract Administration



Contract Administration

What are the contract administration requirements?

Provisions designed to prevent unfair practices that adversely affect DBEs include:

- 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.

A grant recipient needs to submit a DBE reporting form even when business is not conducted with any DBEs.

- A. True
- B. False
- C. It depends on whether procurement dollars were awarded to DBEs in the previous fiscal year.
- D. It depends on whether procurement dollars were awarded to DBEs under other EPA awards.
- E. None of the above



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Contract Administration Forms

Form	Requirement	Provided By:	Completed By:	Submitted To:
EPA Form 5700-52A	Recipients required to report utilization of DBE figures.	Grant Recipients	Grant Recipients	EPA DBE Coordinator
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 forms are associated with the contract administration provisions?

EPA Form 5700-52A – MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Interagency Agreements must be filed by all grant recipients. It is required even if no procurements are made during the reporting period.

EPA Form 6100-2 - DBE Program Subcontractor Participation 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 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 captures the prime’s intended use of an identified DBE subcontractor, and the estimated dollar amount of the subcontract.

These forms are also available on the DBE website, <http://www.epa.gov/osbp/grants.htm>.

What administration requirements do prime contractors and sub-recipients need to follow?

Contract administration requirements to support DBE contractors include:

- A 30-day payment provision for subs
- Written notification of DBE terminations
- Employment of the Six Good Faith Efforts after termination of a DBE (while soliciting a replacement)
- Employing the Good Faith Efforts even after fair share objectives have been met

- Completion of three forms to prevent “bait and switch” tactics:
 - EPA Form 6100-2
 - EPA Form 6100-3
 - EPA Form 6100-4

These forms are filled out by the recipient’s prime contractors and subcontractors, not the grant recipient. They are available online at <http://www.epa.gov/osbp/grants.htm>, and provided in the **Appendix**.

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DBE Requirements

Six Good Faith Efforts
Reporting
Bidders List
Negotiation of Fair Share Objectives

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Fair Share Goals and Objectives

- Fair share goals and objectives are procurement targets:
 - Set by a grant recipient to actively seek out and use DBEs whenever possible
 - Based on the capacity and availability of qualified, certified DBEs located in the grant recipient’s geographical region

Fair Share Objectives

What are fair share objectives?

Fair share objectives are goals set by a grant recipient to actively seek out and use DBEs whenever possible. A fair share objective is a procurement goal based on the capacity and availability of qualified, certified DBEs in the grant recipient’s geographical area. Capacity refers to the DBE’s ability to provide the amount of goods or services necessary to complete the project. Availability refers to the DBE’s proximity to the job site. Will distance reduce the DBE’s ability to do the job assigned? Will it cost more to use a certain DBE because they do not have enough employees, cannot complete the job before the

deadline, or do not provide services in your geographical area?

Examples of fair share objectives are included in the **Appendix** to this manual.



Capitalizing Revolving Loan Funds

- Apply negotiated fair share objectives
 - Use a substantially similar relevant geographic market
- OR
- Negotiate separate fair share objectives with its identified loan recipients
 - Document those negotiations

Which requirements apply to loan recipients?

If the Tribal Nation is a recipient of an EPA financial assistance agreement to capitalize revolving loan funds, the recipient agrees to:

- Apply its own fair share objectives negotiated with EPA to identified loans using a substantially similar relevant geographic market, or
- Negotiate separate fair share objectives with its identified loan recipients. If the Tribal Nation chooses to negotiate separate fair share objectives, the Nation must document those negotiations.

If procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs.

Procurements made in different fiscal years might be treated differently. The recipient must specify this choice in the financial assistance agreement, or reference 40 CFR, Part 33, Subpart D in their manual of grant management policies.



Fair Share Policy

- Applies to all procurement expenses



What is covered under the “Fair Share Policy”?

The “fair share policy” now applies to **all** procurement efforts. Procurement includes all expenses when a grant recipient pays for goods and services with their grant dollars. **Procurement expenses** are all purchases paid for with EPA funds, including:

- Contracts
- Subcontracts
- Loans
- Subawards



Fair Share Objectives Process



Fair share objectives must be:

1. Negotiated, adopted, or exempted
2. Determined
3. Applied to all procurement categories (i.e., construction, equipment, services, and supplies)

Fair Share Objectives

- A fair share objective is not a quota.
- A recipient cannot be penalized for failure to meet its fair share objectives.

Procurement Category	MBE%	WBE%
Construction	7.00%	2.00%
Supplies	3.00%	10.00%
Services	5.00%	3.00%
Goods/Equipment	6.00%	2.00%

Negotiation

Who negotiates fair share objectives?

Unless specifically exempted, all recipients **must** negotiate fair share objectives with EPA. The fair share policy applies to all EPA financial assistance programs. There are several exemptions that help alleviate this burden on most Tribes. (DBE exemption information is provided on the next few pages of this *Manual*.)

The goal that is agreed upon establishes a percentage of procurement dollars that the recipient will try to expend on the four different procurement categories based on the availability analysis or other information used to establish those goals for procurement expenditures for MBE/WBEs.

Tribal and Insular Area recipients are required to adhere to the full requirements of the fair share objectives, which can be found in 40 CFR Part 33, Subpart D., except if they have a performance partnership grant (PPG) or received less than \$250,000 in financial assistance from EPA.

In the diagram on Slide 63, the percentages are examples of actual DBE Fair Share Objectives (targets). The recipient sets target percentages for each procurement category. In this instance, the Tribal Nation has determined that the fair share of construction jobs in their area should go to 7% minority business enterprises and 2% women-owned business enterprises, supplies at 3% and 10%, services at 5% and 3%, and goods or equipment at 6% and 2% respectively.

Exemptions to Fair Share Negotiations

- An EPA financial assistance award in the amount \$250,000 or less, **or** more than one award with a combined total of \$250,000 or less in any fiscal year
- The following loans total \$250,000 or less:
 - Clean Water State Revolving Fund
 - Drinking Water State Revolving Fund
 - Brownfields Cleanup Revolving Loan Fund
- Tribal Recipients of Performance Partnership Grants (PPG) eligible
- Technical Assistance Grants

Is there anyone who does NOT have to negotiate fair share objectives?

Exemption depends on the funding program.

The source of funding determines whether the organization is exempt or not.

- *General.* 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 not required to apply the fair share objective requirements of this subpart.
- (b) *Clean Water State Revolving Fund (CWSRF) Program, Drinking Water State Revolving Fund (DWSRF) Program, and Brownfields Cleanup Revolving Loan Fund (BCRLF) Program Identified Loan Recipients.* A recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the fair share objective requirements of this subpart 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.
- *Tribal and Intertribal Consortia recipients of program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR Part 35, Subpart B.* Tribal and Intertribal consortia recipients of PPG eligible grants are not required to apply the fair share objective requirements of this subpart to those grants.*
- *Technical Assistance Grant (TAG) Program Recipients.* A recipient of a TAG is not required to apply the fair share objective requirements of this subpart to that grant.

Module 9: Disadvantaged Business Enterprises (DBEs)

*Only PPG eligible grants that Tribal Nations actually receive are exempt from negotiating fair share objectives. Your Grants Specialist can tell you if your award is PPG eligible. The fact that a Tribal Nation is “eligible” to roll grants into a PPG does not make them exempt from negotiations.



Sample Determination of Exemption 2012

Funds	Grant	Eligible	Does NOT Count
\$50,000	Water Pollution Control Grant (PPG Eligible)		✓
\$400,000	Wetlands Development Grant (PPG Eligible)		✓
\$100,000	Research and Development Grant (Non-PPG Eligible)	✓	
\$15,000	General Assistance Program (GAP) grant		✓
\$100,000 does not reach the \$250,000 threshold, so Tribe A does NOT need to negotiate fair share objectives.			

For example, Tribe A receives four grants from EPA in 2012. When applying the \$250K exemption to determine whether or not a Tribe will have to negotiate fair share objectives, we would first eliminate the first and second grants because they are PPG eligible, and therefore, not subject to negotiations. We would then eliminate the fourth grant because it is a GAP grant, which are also not subject to negotiations. The third grant is the only grant that could trigger the negotiations. However, the third grant is only for \$100,000. Therefore the \$250,000 threshold is not reached. Tribe A would **not** have to negotiate fair share objectives in 2012.

Exemptions will be stated in the “terms and conditions” of the award document. For example:

The award amount of this assistance agreement is \$250,000 or less. Therefore, the recipient of this assistance agreement is exempt from the fair share objective requirements of 40 CFR, Part 33, Subpart D, and is not required to negotiate fair share objectives for the utilization of DBEs in its procurements.

The following are Tribal PPG Eligible Grant Programs.

- (2) The Indian Environmental General Assistance Program Act of 1992, 42 U.S.C. 4368b.
- (3) Clean Air Act. Air pollution control (section 105).
- (4) Clean Water Act.
 - (i) Water pollution control (section 106 and 518).

- (ii) Water quality cooperative agreements (section 104(b)(3)).
 - (iii) Wetlands development grant program (section 104(b)(3)).
 - (iv) Nonpoint source management (section 319(h)).
- (5) Federal Insecticide, Fungicide, and Rodenticide Act.
- (i) Pesticide cooperative enforcement (section 23(a)(1)).
 - (ii) Pesticide applicator certification and training (section 23(a)(2)).
 - (iii) Pesticide program implementation (section 23(a)(1)).
- (6) Pollution Prevention Act of 1990. Pollution prevention grants for Tribes (section 6605).
- (7) Safe Drinking Water Act.
- (i) Public water system supervision (section 1443(a)).
 - (ii) Underground water source protection (section 1443(b)).
- (8) Toxic Substances Control Act.
- (i) Lead-based paint program (section 404(g)).
 - (ii) Indoor radon grants (section 306).
 - (iii) Toxic substances compliance monitoring (section 28).
- (9) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276; 112 Stat. 2461, 2499; 42 U.S.C. 6908a).
- (i) Hazardous Waste Management Program Grants (Pub. L. 105–276; 112 Stat. 2461, 2499; 42 U.S.C. 6908a).
 - (ii) Underground Storage Tanks Program Grants (Pub. L. 105–276; 112 Stat. 2461, 2499; 42 U.S.C. 6908a).

Tribal PPG Eligible Grant Programs are listed in 40 CFR 35 Subchapter B, Section 35.533 and 35.501(a)(2-9). 40 CFR 35 can be read online at <http://ecfr.gpoaccess.gov>.



Sample Determination of Exemption 2012

Funds	Grant	Eligible
\$100,000	Research and Development Grant (Non-PPG Eligible) Six-month extension granted	✓
\$200,000	Soil Analysis Grant (Non-PPG Eligible)	✓
\$300,000 exceeds the \$250,000 threshold, so Tribe A does need to negotiate fair share objectives.		

Jan	July
\$100,000 extension	\$200,000

Module 9: Disadvantaged Business Enterprises (DBEs)

In future years, after eliminating PPG Eligible grants, and GAP grants, the tribe's total may be greater than \$250,000, and they would need to negotiate fair share objectives. **Extensions are included in the total dollar amount when determining whether or not a grant recipient has reached the threshold level.**

For example, Tribe A receives a six-month extension on its research and development grant (the third grant in the sample eligibility determination). Tribe A is also awarded a new EPA grant in 2012 for \$200,000. If this new grant counts, then the total is \$300,000. Even when that amount is only eligible for half the year, it still brings the total for the fiscal year over the threshold level. The Tribe would need to negotiate fair share objectives in 2012.

Recipients may:

1. Elect to negotiate their own fair share objectives, or
2. Adopt the fair share objectives of the lead environmental state agency.

Recipients may use the approved fair share objectives of another recipient with the same or a similar relevant geographic buying market, when purchasing the same or similar items, as a guide for developing their fair share objectives.

If the Tribal Nation decides to adopt fair share objectives, they affirm the acceptance of the lead environmental state agency's fair share objectives in the "terms and conditions" of the award document.

For example, award "terms and conditions" might specify:

The dollar amount of this assistance agreement or the total dollar amount of all of the Tribal Nation's financial assistance agreements is \$250,000 or more. By signing this financial assistance agreement, the Tribal Nation accepts the fair share objectives stated herein and attests to the fact that it is purchasing the same or similar construction, supplies, services, and equipment, in the same or similar relevant geographic buying market as the lead environmental state agency whose objectives we are adopting.

Options

If Exempt a Tribal Nation must still:

- Follow the Six Good Faith Efforts
- File reports

If NOT Exempt a Tribal Nation can choose to:

- Adopt the environmental state agency's goals
- Negotiate their own fair share objectives

If a Tribal Nation is exempt from negotiating fair share objectives:

- There will be no goals in the "terms and conditions" of the grant agreement.
- They are still required to follow the Six Good Faith Efforts.
- They must still file DBE reports (EPA Form 5700-52A)

If a Tribal Nation is NOT exempt from negotiating fair share objectives they can choose one of two options:

1. Adopt the environmental state agency's goals
2. Negotiate their own fair share objectives

Negotiation Process

- Proposed fair share objectives and supporting documentation must be submitted within 120 days after the acceptance of the assistance award.
 - Narrative descriptions are acceptable.
- Fair share objectives are negotiated every three years.
 - Objectives remain in effect for three federal fiscal years unless there are significant changes to the data supporting the fair share objectives.

Adoption

- Adoption means the award recipient agrees to use the state's goals.
- These goals are stated in the "terms and conditions" section of the award document.

Adoption

Can we adopt the fair share objectives of another recipient instead of negotiating new objectives?

Learner Notes

Learner Notes

Narrative descriptions are written words like in a work plan rather than numbers and forms like in a budget. Negotiators need not present a formal proposal; plain English explanations of your intentions are fine.

What is the process for negotiating fair share objectives?

Proposed fair share objectives and supporting documentation must be submitted within 120 days after the acceptance of the assistance award. Narrative descriptions are acceptable, since there is no official form. Since this was a new requirement for Tribal Nations, there was a three-year phased-in period. Full compliance by Tribal Nations was required as of May 2011.

Fair share objectives are negotiated every three years. They remain in effect for three fiscal years (determined at the time of negotiation) unless there are significant changes to the data supporting the fair share objectives. (The negotiation process is explained in greater detail below.)

Determination of Fair Share Objectives

1. Calculate the funding level
2. Analyze the market
3. Submit your fair share objectives

How do we determine fair share objectives?

There are many methods for determining fair share objectives. Recipients often use availability analyses, disparity studies, and strength/weakness comparison charts, just to name a few. Grant funds can be used to cover the cost of analysis. Ask your regional DBE Coordinator for details.

Determination of fair share objectives usually follows three basic steps:

1. Calculate the funding level
2. Analyze the market
3. Submit your fair share objectives

Calculate the Funding Level

- Determine the overall funding level for the Tribal Nation, for example:

EPA provides	\$800,000
State provides	<u>\$200,000</u>
under a cost-share agreement	
Total funding =	\$1,000,000

The starting point for determining the Fair Share Objective is the \$1,000,000 total funding, not just the \$800,000 contributed by EPA.

Calculate the Funding Level (continued)

- In setting fair share objectives, the Tribal Nation should consider only the total funding dollars spent on procurement.
- Expenses such as staff salaries and utilities are not considered procurement, for example:

Total funding	\$1,000,000
Portion to be spent on procurement	\$500,000

The total of the four procurement categories is 15%, and thus the goal of this project is to spend \$75,000 in purchases from DBEs.

$$15\% \times \$500,000 = \$75,000$$

Determine Availability of DBEs

Common methods for analyzing the market are:

1. Availability analysis
2. Disparity study
3. Alternate Methods
 1. Strength and weakness comparison charts

Availability Analysis

To conduct an availability analysis:

1. Determine the relevant market area.
2. Identify types of EPA awards received.
3. Identify categories of procurement.
4. Identify types of companies used.
5. Count the companies identified.
6. Sort companies by industry, ethnicity, and gender.
7. Calculate availability.

Module 9: Disadvantaged Business Enterprises (DBEs)

Analyze the Market

An availability analysis counts the appropriate firms in the market area and determines the percentage of firms that are DBEs. Two common methods for analyzing the market are the (1) availability analysis and (2) disparity study.

Availability Analysis

To conduct an availability analysis:

1. Determine the relevant market area.
2. Identify types of EPA awards received.
3. Identify categories of procurement.
4. Identify types of companies used.
5. Count the companies identified.
6. Sort companies by industry, ethnicity, and gender.
7. Calculate availability.

1. Determine the relevant market area.

The relevant market area is the geographical area from which prime contractors and subcontractors are drawn by the recipient for EPA-funded programs. This area should be reasonable under the circumstances. It may be a geographical portion of a state, an entire state, or a multi-state area. Simply ask, "Where do we normally shop for construction, equipment, service, and supply vendors?"

Except for the U.S. Postal Service DBE requirements apply to all procurements, even those over which the Tribal Nation may have no control, such as telephone, utility, and delivery services. If service is provided by a DBE, then it counts toward the fair share objectives. When a recipient procures meals, lodging, gasoline, and emergency vehicle repair services for employees on official travel, it does not have to undertake the six steps before each purchase unless a DBE travel agent is utilized, in which case the amount purchased from that travel agent would be reported as a DBE service.

2. Identify types of EPA awards received.

The Tribal Nation should pinpoint the types of EPA awards it receives. These could include, for example, funding for wastewater treatment construction plants or Superfund remediation projects. Each award recipient should review its files for prior years to identify its EPA awards. Going back several years will give the Nation a picture of typical types of procurement; whereas, using only a few months of recent data may provide a skewed picture of typical contracting.

3. Identify categories of procurement.

For each type of award, the Tribal Nation should determine the types of goods or services that were used. Because DBE fair share objectives apply to construction, equipment, services, and supplies,

award recipients should identify types of contract awards previously made in each area. They can use this information to determine potential contracting opportunities on similar projects during the award period.

In identifying types of procurement, remember to include subcontractors as well as prime contractors. A prime contractor on a construction project is a general contractor. The subcontractors could include a wide variety of specialties, such as excavators, masons, haulers, painters, and insulators, to name just a few.

4. Identify types of companies used.

A Tribal Nation should determine the approximate total number of companies from each industry where contracting opportunities have been identified. This means all companies, no matter who the owners are, whether they are majority males, minorities, or women. Of these companies, the Nation should determine the number that are DBEs, MBEs, and WBEs.

A Tribal Nation can identify companies through:

- Lists and databases
- Outreach
- Census information

States and local governments maintain information on companies with which they have contracted or could contract. Previously used companies are kept on file and DBE data is already collected.

Companies not yet contracted with are often surveyed for basic data and DBE status. Company lists and databases produced by governmental entities are available to the public.

Agencies that provide certifications maintain lists of these companies, usually in online databases.

The most comprehensive lists are located at:

- * Office of Small Business Programs (OSBP) <http://www.epa.gov/osbp/grants.htm>
- * Small Business Vendor Profile System (SBVPS) <http://cfpub.epa.gov/sbvps/> a database registry for small and disadvantaged business concerns
- * System for Award Management (SAM): <http://www.sam.gov>
- * Department of Transportation (DOT) http://osdbuweb.dot.gov/Procurement/subcontracting_directory.cfm a directory of DBE contractors
- * Dynamic Small Business Search http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm

Check the List of Debarred Contractors <http://www.sam.gov> to ensure the companies are eligible.

Module 9: Disadvantaged Business Enterprises (DBEs)

Outreach and other efforts to identify companies include developing advertisements and notices to let contractors know you are looking.

- Publicize and distribute outreach materials to industries listed in the Yellow Pages of the phone book.
- Place ads in newspapers, magazines, on websites and other media.
- Distribute notices through local chambers of commerce, ethnic chambers of commerce, and other agencies that support DBEs.
- Distribute notices through organizations whose members include owners of DBEs, such as:
 - National Association of Women Business Owners <http://www.nawbo.org/>
 - Minority Business Development Agency <http://www.mbda.gov/>
 - National Center for American Indian Enterprise Development <http://www.ncaied.org>
- Set up an 800 number for reaching designated staff members who can provide information and answer questions about the fair share policy and take information from callers concerning their businesses.
- Use public access television to publicize the fair share policy and the 800 number.

United States Economic Census data can be used to determine both the total number of available companies in the market region and the number that are DBEs. Census profiles are updated every five years, in the years ending in the numbers 2 and 7. Use County Business Patterns (CBP) in conjunction with Survey of Minority-Owned Business Enterprises (SMOBE) and Survey of Women-Owned Business Enterprises (SWOBE) to conduct an availability analysis of census data.

- County Business Patterns census data is available online at <http://www.census.gov/econ/cbp/index.html>.
- Information is provided on national, state, county, and local levels.
- Survey data is available online at <http://www.census.gov/csd/mwb/>.
- SMOBE and SWOBE provide statistics about businesses that:
 - Are at least one-half owned by Blacks, Hispanics, Asian Americans, Pacific Islanders, Native Americans, or Alaska Natives
 - File individual proprietorship, partnership, or subchapter S-corporation tax forms

Have at least \$500 annual receipts
The Office of Small Business Programs, Disadvantaged Business Enterprise Program has put together a list of resources to help you locate certified DBE companies. The list is organized by state, territory, and district. The DBE Resource List will soon be online at <http://www.epa.gov/osbp/grants.htm> and is provided in the *Appendix*.

5. *Count the companies identified.*
Add the number of companies identified in the market region for the total number of available contractors/vendors.
6. *Sort companies by industry, ethnicity, and gender.*
Categorize companies by the four industries: construction, equipment, service, and supply. Also determine the number of companies per industry that are DBEs, MBEs, and WBEs. This data will be needed for EPA reports.
7. *Calculate availability.*
After collecting information about companies calculate their availability by dividing the number of DBE companies by the entire number of companies. The result of this calculation is expressed as the percentage of available companies that qualify for DBE compliance. This can be done to figure the percentage of MBEs and WBEs as well.

EPA Award: Build a bridge

Industry: Construction

Relevant market area: *Name of Tribal Nation*

Total number of construction companies in the market region = 375

Number of construction companies in the market region that are DBEs = 18

DBE availability for the market region:

$18 \div 375 = 5\%$

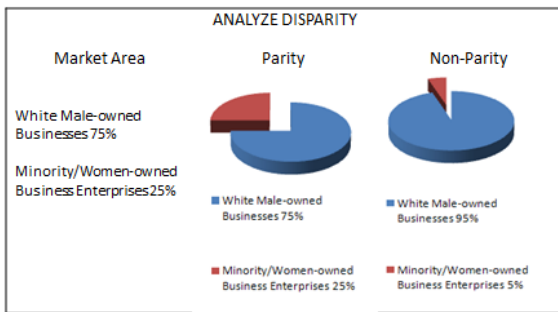
The base figure for DBE availability is five percent. The base figure is adjusted every three years by examining the evidence, re-contacting companies on the list, and determining if anything has changed. At this time, new companies are added to the list and an adjusted base figure is calculated.

Learner Notes

Learner Notes

Some Tribal Nations only allow Tribally pre-approved subcontractors to work in the Nation. These Tribal Nations should have lists of Tribally-owned and disadvantaged businesses. This is a good list of potential bidders. Be sure to check with your Tribal Nation's administration regarding any restrictions on subcontractors.

Disparity Study



Disparity Study

The data provided by a good disparity study can make an excellent guide for setting narrowly defined DBE objectives. A disparity study involves comparing the available DBE prime contractors and subcontractors with the contracts actually awarded to them. Typically a disparity study is performed by a consultant. The following is an example of one way in which a consultant might conduct a disparity study.

The first step is to perform an availability analysis, either by using lists and outreach or by using census information.

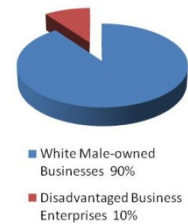
DISPARITY AND AVAILABILITY OVERLAP		
	Disparity Study	Availability Analysis
Determine availability of all DBEs.	✓	✓
Calculate ethnicity and gender distribution.	✓	✓
Measure disparity between utilization and availability.	✓	
Collect anecdotal accounts.	✓	

The second step is measuring the difference between DBE availability and their actual use. States use (1) statistics and (2) anecdotal evidence to obtain an accurate picture of DBE opportunities. Although statistics can measure DBE underutilization, to be classified as discrimination the underutilization must be caused by conditions other than chance. Anecdotal accounts can help show this causation. On the other hand, anecdotal accounts by themselves cannot show systemic patterns of discrimination. For this we rely on statistics.

1. Statistical analysis requires mathematical comparison of availability of DBEs and their dollar participation in EPA programs. For example:

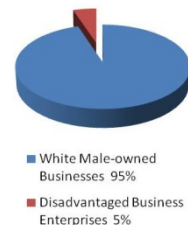
Market Area

White Male-owned Businesses 90%
Disadvantaged Business Enterprises 10%



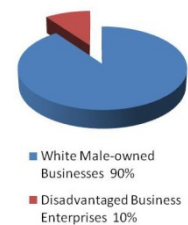
Non-Parity

State X has 500 construction companies. 50 of these or 10% are DBEs. In 2011, State X awarded \$1,000,000 in construction contracts. \$50,000 (or 5%) of this was awarded to DBEs. The disparity between DBE availability (10%) and use (5%) is 5%.



Parity

State Y has 500 construction companies. 50 of these or 10% are DBEs. In 2011, State Y awarded \$1,000,000 in construction contracts. \$100,000 (or 10%) of this was awarded to DBEs. In this case there is no disparity between the available DBEs and their dollar participation (parity exists).



2. Anecdotal evidence consists of accounts or stories about personal experiences in the contracting marketplace. Anecdotal accounts should be collected from a variety of DBEs and white male-owned businesses. While these accounts alone do not justify race conscious goals, combined with statistical information they can constitute powerful evidence of discrimination.

These stories provide information on:

- The kinds of discriminatory acts that routinely occur,
- How discriminatory barriers are imposed,
- Who imposes them, and
- Their effects on DBE development.

Anecdotal accounts combined with statistical evidence provide the Tribal Nation with disparity data. This data is used to formulate policies and procedures that help to eradicate the effects of discrimination on DBEs, specifically businesses owned by Tribal members.

Costs incurred by the Tribal Nation to prepare a market analysis may be eligible for grant funding, if available. The grant recipient should review the financial assistance agreement.

The base figure for DBE availability is 25 percent. The base figure is adjusted every three years by examining the evidence, re-contacting companies on the list, and determining if anything has changed. At this time, new companies are added to the list and an adjusted base figure is calculated.

Strength and Weakness Comparison

Comparison charts organize anecdotal information.

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Source: Management Module 9 U.S. Environmental Protection Agency

Strengths	Weaknesses
Reputation for quality workmanship	Lack of experience with river-based solutions (mostly lake-based)
Only water quality experts in the area	Experiencing unexpected growth (some new hires and training issues)
Provide personal and flexible service	Not a certified Minority or Women-owned Business Enterprise

Can we include the cost of negotiating fair share objectives in the project budget?

It is possible for a Tribal Nation to include the costs associated with goal negotiations in their project budgets. However, the final approval and exact method to do this is usually given on a case-by-case basis. Contact your regional DBE Coordinator to discuss your options.

Submit Fair Share Objectives

- Document
 - Fair share objectives
 - Method used to calculate the funding level
 - Data considered when determining the objectives
- Submit within 120 days of accepting an award

Submit the determined fair share objectives

Once an award recipient has completed its calculation of goals, it must write and submit the fair share objectives. An objective might read, for example:

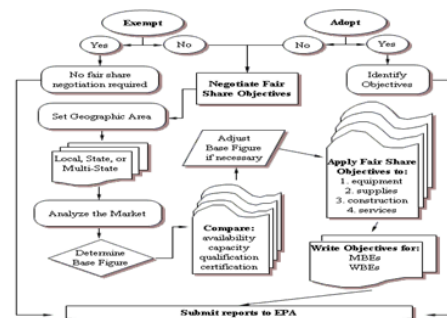
The Tribal Nation will procure construction, equipment, services, and supplies for the EPA-funded bridge building project at a cost of \$75,000 from companies with at least 25% certified as disadvantaged business enterprises.

The Tribal Nation must give EPA enough data as supporting evidence to help the agency understand how the Nation came up with the proposed objectives. If a disparity analysis was conducted, that report should be included when the fair share objectives are submitted. Supporting documentation shows the:

- Data considered when setting the goals
- Method used to calculate the goals

A recipient must submit its proposed DBE fair share objectives and supporting documentation to its EPA Regional DBE Coordinator within 120 days after accepting a financial assistance award. The EPA regional coordinator reviews the objectives and documentation to make sure it is reasonable. The regional coordinator may request additional data, if needed, before approving the objectives.

Fair Share Objectives Negotiation Process



After Submission

- EPA must respond in writing to the recipient's submission within 30 days of receipt.
 - EPA either agrees with the submission or provides initial comments for further negotiation.
 - The Tribal Nation can safely assume agreement if EPA fails to respond within 30 days.
- Fair share objectives must be agreed upon by the recipient and EPA before funds may be expended for procurement.

What happens to the fair share objectives after they are submitted?

After the fair share objectives are submitted to EPA, the Regional DBE Coordinator decides whether to approve them or request additional information. EPA must respond in writing to the recipient's submission within 30 days of receipt. EPA either agrees with the submission or provides initial comments for further negotiation. The Tribal Nation can safely assume agreement if EPA fails to respond within 30 days.

DBE fair share objectives must be agreed upon by the recipient and EPA before funds may be expended for procurement. Fair share objectives must be applied to all procurement categories (i.e., construction, equipment, services, and supplies). Fair share objectives will remain in effect for three (3) fiscal years (as determined at the time of negotiation), unless there are significant changes to the data supporting the fair share objectives.

**Contact your DBE
Regional Coordinator
with any questions or
concerns.**

What is the program office's role and responsibility?

For assistance awards not administered by EPA regions, an EPA award official or designee is responsible for negotiating the "fair share objectives" and for ensuring that Project Officers, other staff, and recipients comply with EPA's fair share policy. Program offices work closely with

their regional Grants Specialists. Regional Grants Specialists oversee the work being done by the Project Officers within their office or branch. Program offices ensure compliance with DBE requirements and monitor project progress.

Contact information provided at <http://www.epa.gov/osbp/grants.htm>.

Different Goals and Objectives

- Negotiation one (1) set of objectives for each procurement expense:
 - Construction
 - Supplies
 - Services
 - Equipment
- The recipient may not negotiate different objectives for different grants.

Can we have different DBE objectives?

A grant recipient (Tribal Nation) negotiates objectives for each procurement expense (i.e., construction, supplies, services, and equipment). The negotiated goals and objectives are used for each grant. You may **not** negotiate different objectives for different grants. Regardless of how many different programs and/or grants you have, there will only be one set of objectives for the four goals (i.e., procurement categories).

A fair share objective is a _____ goal based on the capacity and availability of qualified, certified DBEs in the grant recipient's geographical area.

- A. contractor
- B. sub-recipient
- C. procurement
- D. EPA
- E. All of the above



Fair share objectives *must* be:

- A. Negotiated
- B. Adopted
- C. Exempted
- D. Applied to all procurement categories
- E. All of the above

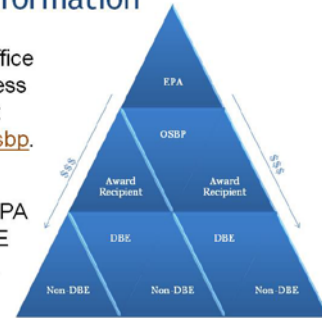


For more information

Visit the EPA Office of Small Business Programs at www.epa.gov/osbp.

AND/OR

Contact your EPA Regional DBE Coordinator.



Where can we get more information?

Fact sheets comparing previous EPA requirements and recommendations with the current program are provided in the **Appendix**. Additional information is provided on the EPA Office of Small Business Programs website at <http://www.epa.gov/osbp/>. Contact your EPA regional DBE Coordinator with questions specific to your project.

Determination of fair share objectives usually includes:

- A. Calculating the funding level
- B. Analyzing the market
- C. Submitting fair share objectives to EPA
- D. Availability analyses or disparity studies
- E. All of the above



Learner Notes

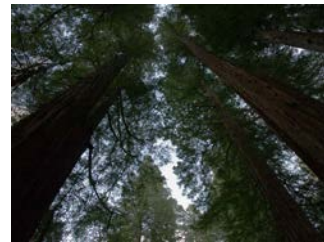
Learner Notes

In summary:

- The DBE Program is a requirement of every EPA grant.
- The Office of Small Business Programs is responsible for policy and procedural guidance.
- The DBE program encourages federal dollars to flow down to disadvantaged businesses (such as Tribally-owned businesses).
- DBE policy ensures disadvantaged businesses receive their fair share of federally funded project funds.
- Grantees agree to share the wealth with other DBEs.

Learner Notes

Activity 9.d (found online at www.petetribal.org) gives you a chance to share objectives. Activity 9.d (found online at www.petetribal.org) gives you a chance to practice negotiating fair share objectives.



Attachment to Module 9

Answers to Self-Assessment Questions

Slide	Question (bold font indicates correct answer)	Explanation
7	<p>_____ is defined as the acquisition through contract, order, purchase, lease, or barter of supplies, equipment, construction, or services needed to accomplish federal assistance program objectives.</p> <p>A. Contract</p> <p>B. Procurement</p> <p>C. Purchase</p> <p>D. Sole source</p> <p>E. None of the above</p>	Procurement includes all expenses whether accomplished through contracts, subcontracts, loans, and sub-awards, space and equipment leased or purchased outright for construction, equipment, supplies, and services.
14	<p>Who qualifies as a Disadvantaged Business Enterprise (DBE)?</p> <p>A. Small businesses in rural and urban areas</p> <p>B. Historically underutilized businesses</p> <p>C. Businesses owned by women</p> <p>D. Businesses owned by minorities</p> <p>E. All of the above</p>	Many businesses qualify for DBE certification. If the business you wish to work with is not already certified, remind them of the preferential treatment DBEs receive.
31	<p>Who can certify a business as disadvantaged?</p> <p>A. Federal agencies such as SBA and DOT</p> <p>B. State, local, and Tribal governments</p> <p>C. Independent and private entities such as TERO</p> <p>D. The Environmental Protection Agency</p> <p>E. All of the above</p>	Certification can be granted by a wide variety of organizations. Federal certification under SBA and DOT grant a certified DBE the most benefits. EPA certification should be sought as a last resort
34	<p>DBEs are companies owned or controlled by at least _____ socially and economically disadvantaged individuals.</p> <p>A. 11%</p> <p>B. 25%</p> <p>C. 51%</p> <p>D. 75%</p> <p>E. All of the above</p>	To qualify as a DBE under EPA programs an entity must establish that it is at least 51 percent 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.

Module 9: Disadvantaged Business Enterprises (DBEs)

Slide	Question (bold font indicates correct answer)	Explanation
47	<p>Dollar amounts reported on the DBE reporting form include:</p> <ul style="list-style-type: none"> A. All non-grant procurements for the tribal nation B. All procurements for all EPA grant projects, combined C. Just procurements for supplies and services D. All DBE and non-DBE procurements for a single project E. None of the above 	<p>Reporting includes all procurements and purchases, not just DBE purchases, for a single award, not all EPA or grantee projects.</p> <p>The sole exception to this rule is the State Revolving Fund Program, where the DBE program requirements apply up to the amount of EPA's share.</p>
50	<p>A grant recipient needs to submit a DBE reporting form even when business is not conducted with any DBEs.</p> <ul style="list-style-type: none"> A. True B. False C. It depends on whether procurement dollars were awarded to DBEs in the previous fiscal year. D. It depends on whether procurement dollars were awarded to DBEs under other EPA awards. E. None of the above 	<p>A DBE reporting form must be completed for every fiscal year of the EPA award's project period.</p>
53	<p>The DBE reporting form is signed by the:</p> <ul style="list-style-type: none"> A. Contractor B. Sub-recipient C. Loan recipient D. EPA grantee E. All of the above 	<p>A DBE reporting form must be signed by the person chosen by the Tribal Nation as authorized to sign legal documents on the EPA award project.</p>
82	<p>A fair share objective is a _____ goal based on the capacity and availability of qualified, certified DBEs in the grant recipient's geographical area.</p> <ul style="list-style-type: none"> A. contractor B. sub-recipient C. procurement D. EPA E. All of the above 	<p>Fair share objectives are goals set by a grant recipient to actively seek out and use DBEs whenever possible.</p> <p>A fair share objective is a procurement goal based on the <i>capacity</i> and <i>availability</i> of qualified, certified DBEs in the grant recipient's geographical area.</p> <ul style="list-style-type: none"> o Capacity refers to the DBE's ability to provide the amount of goods or services necessary to complete the project. o Availability refers to the DBE's proximity to the job site.

Module 9: Disadvantaged Business Enterprises (DBEs)

Slide	Question (bold font indicates correct answer)	Explanation
85	Fair share objectives must be: A. Negotiated B. Adopted C. Exempted D. Applied to all procurement categories E. All of the above	Fair share objectives <i>can</i> be negotiated, adopted, or exempted but must be applied to all procurement categories.
88	Determination of fair share objectives usually includes: A. Calculating the funding level B. Analyzing the market C. Submitting fair share objectives to EPA D. Availability analyses or disparity studies E. All of the above	Recipients often use availability analyses, disparity studies, and strength/weakness comparison charts, just to name a few. Determination of fair share objectives usually follows three basic steps (1) calculate the funding level, (2) analyze the market, and (3) submit your fair share objectives.