

EPA Grantees, Prime Contractors, and Subcontractors Responsibilities Under the EPA DBE Regulations 40 CFR Part 33

EPA's Disadvantaged Business Enterprise Program (DBE) rule applies to procurement actions funded in part by EPA assistance agreements awarded after May 27, 2008. EPA Grantees (local governments or non-profits) and their Prime Contractors and DBE Subcontractors are responsible for complying with these rules during the procurement of construction contracts, equipment purchase orders, services agreements (engineering, inspection, legal, etc.) and supplies. A list of responsibilities for EPA Grantees, Prime Contractors and DBE Subcontractors, a copy of Appendix A from the DBE regulations, and a listing of the six Good Faith Efforts follows:

EPA Grantee's Responsibilities

1. Adopt the fair share objectives of the state revolving loan fund agency, or conduct an Availability Analysis of local DBE resources and negotiate fair share objectives with EPA.

Recipients of grants of \$250,000 or less are not required to conduct an availability analysis or adopt/negotiate fair share objectives.

2. Include a copy of Appendix A in each contract with a primary contractor (construction, engineering, supplier, etc.).

3. Employ the six Good Faith Efforts during procurement of construction, equipment, services, and supplies

4. Require prime contractor to complete all applicable items on the following Lists of Prime Contractor's Pre-Award and Post-Award Responsibilities.

5. Semiannually report DBE participation achieved to Ms. Kinshasa Brown-Perry, EPA Region III DBE Coordinator, using EPA Form 5700-52A, even if the reports are negative reports.

6. Maintain records documenting compliance with the requirements of the DBE regulations, including documentation of EPA grantee and its prime contractor's good faith efforts.

Prime Contractor's Pre-Award Responsibilities

1. Employ the six Good Faith Efforts, if the prime contractor awards subcontracts.

2. Employ the six Good Faith Efforts even if the prime contractor has achieved its fair share objectives.

3. Provide EPA form number 6100-2 – *DBE Program Subcontractor Participation Form* and form number 6100-3 – *DBE Program Subcontractor Performance Form* to each DBE subcontractor.

4. Complete EPA form number 6100-4 – *DBE Program Subcontractor Utilization Form*.

5. Submit EPA forms 6100-3, and 6100-4 to EPA grantee with bid package or proposal.

Note: EPA forms 6100-2, 6100-3 and 6100-4 may be downloaded from EPA's Office of Small Business Programs website
<http://www.epa.gov/osbp/grants.htm>

Prime Contractor Post-Award Responsibilities

1. Pay subcontractors for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the EPA grantee.
2. Notify the EPA grantee in writing before the prime contractor terminates a DBE subcontractor for convenience.
3. Employ the six good faith efforts if soliciting a replacement subcontractor after a DBE subcontractor fails to complete work under the subcontract for any reason.
4. Semiannually inform the EPA grantee of DBE participation achieved for their required reporting.
5. Maintain records documenting compliance with the DBE regulations, including documentation of the contractor's good faith efforts.

DBE Subcontractor's Responsibilities

1. Obtain certification as a DBE.
2. May submit EPA form 6100-2 – *DBE Subcontractor Participation Form* to Ms. Kinshasa Brown-Perry, EPA Region III DBE Coordinator.
3. Must complete EPA form 6100-3 – *DBE Program Subcontractor Performance Form*, and submit it to the prime contractor soliciting services from the subcontractor.

APPENDIX A

The following term and condition must be included in each procurement contract signed by an EPA grantee and their contractors:

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

Six Good Faith Efforts

1. Ensure awareness of contracting opportunities to fullest extent practicable, including placing DBEs on solicitation lists.
2. Make information on forthcoming opportunities available to DBEs. Adjust time frames and delivery schedules to encourage participation by DBEs. Advertise for bids and proposals for at least 30 days before closing date.
3. Divide total requirements of the project, when economically feasible, to permit maximum DBE participation.
4. Encourage DBE consortiums for large contracts.
5. Use Small Business Administration (SBA) and Minority Business Development Agency (MBDA) offices to obtain lists of DBE firms.
6. Require prime contractor to follow steps 1 through 5, if the prime will be sub-contracting parts of the contract work.