

U.S. ENVIRONMENTAL PROTECTION AGENCY

RECIPIENT'S GUIDANCE FOR UTILIZATION OF MINORITY BUSINESS ENTERPRISE IN PROCUREMENTS
UNDER EPA ASSISTANCE AGREEMENTS



PREPARED
BY

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WASHINGTON, D.C. 20460

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U.S. Environmental Protection Agency
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230 South Dearborn Street
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On July 14, 1983, President Reagan issued Executive Order 12432 on "Minority Business Enterprise Development," which directed Federal agencies to develop annual plans establishing minority business enterprise (MBE) objectives and to encourage recipients of Federal grants and cooperative agreements to achieve a reasonable level of minority business participation in contracts awarded under its grants and cooperative agreements. In awards made to State and local governments this encouragement is to be consistent with the principles of "federalism."

Subsequently, on February 15, 1984, Administrator William D. Ruckelshaus issued his commitment memorandum on minority business enterprise. In this statement he affirmed both his personal commitment and that of the Environmental Protection Agency (EPA) to furthering economic opportunities for MBEs.

This guidance is provided to assist grant recipients to achieve a reasonable minority business participation in subagreements. It may also be used for procuring with small and women's businesses.

As expressed in the Deputy Administrator's February 16, 1984, memorandum to the Assistant and Regional Administrators, the Agency is committed to the "fair share" concept which is now applicable to all EPA assistance agreements. A fair share is defined as a reasonable commitment of subagreement funds commensurate with the total project

funding, local demographic factors and the availability of minority and women's businesses. In those cases where there is a State or local executive directive, ordinance or statute prescribing goals for MBE participation, those goals will constitute the fair share.

To implement the fair share concept, negotiations will be conducted between State environmental officials or assistance recipients and a designated EPA official. As stated in the Deputy Administrator's memorandum, " ... In all probability, these early negotiations will establish the basis for MBE utilization in the future. The State's fair share should be based upon the State project priority list, cumulative grant awards and other goals or standards for utilization of minority businesses of the State and potential grantees. A fair share for each grant is not required."

In the Wastewater Treatment Construction Grant Program, the Regional Administrators will negotiate an overall fair share with delegated States. The delegated State may allocate its fair share to particular construction grant projects as it sees fit. The delegated State and not EPA may determine whether, and to what extent a fair share objective should be established for each project.

For other EPA financial assistance programs, the Assistant Administrator, Regional Administrator, or a designated EPA official, as appropriate, will conduct fair share negotiations directly with the recipients.

As part of the fair share concept, recipients must comply with the MBE-related requirements set forth in EPA's procurement regulations, 40 CFR Part 33. Specifically, in contracting for construction, supplies or services on an EPA funded project, State and local government recipients must follow the 6 affirmative steps contained in 40 CFR Section 33.240. Contractors for these supplies, services and construction are also required

to carry out the affirmative steps in the award of subcontracts. In accordance with 40 CFR Section 33.815, institutions of higher education, hospitals and other non-profit organizations must implement the "positive effort requirements" of OMB Circular A-110. This circular provides, "Positive efforts shall be made by recipients to utilize ... minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing Federal funds."

EPA offers the following suggestions to assist State and local government recipients in carrying out the affirmative steps of 40 CFR 33.240. These suggestions may also be used by institutions of higher education, hospitals and other non-profit organizations in carrying out the "positive effort" standard:

1. Including qualified minority businesses on solicitation lists.
 - o Do you, the recipient, maintain and update a listing of qualified MBEs that can be solicited for supplies, construction and/or services?
 - o Is this listing appropriately provided to all interested parties who have requested to be placed on your bidder's mailing lists or requested copies of the bidding or proposing documents?
 - o Do you contact the appropriate sources within your general area and State to identify qualified MBEs for placement on your minority business listings?
 - o Are any other MBE listings utilized such as the State's minority business office, the Small Business Administration,

Minority Business Development Agency, USEPA Office of Small and Disadvantaged Business Utilization (OSDBU), or the Department of Transportation?

- o Is this listing appropriately reviewed by State environmental agency personnel?

2. Assuring that minority businesses are solicited.

- o Do you conduct meetings, conferences, and follow-ups with MBEs, minority business associations, minority media, etc., to inform these groups of supplies, services, and building opportunities?
- o Do you conduct pre-bid, pre-solicitation, and post-award conferences to ensure that consultants, suppliers, and builders solicit MBEs?
- o Do you provide bidders and offerors with listings of qualified MBEs and establish that a fair share of contracts should be awarded?
- o Do you advertise in general circulation, trade publications, State agency publications of identified sources, minority focused media, etc., concerning contracting opportunities on your projects?
- o Do you provide interested MBEs with adequate information about plans, specifications, timing and other requirements of the proposed project?
- o Do you provide MBE trade organizations with succinct summaries of solicitations?
- o Do you maintain a list of minority focused publications that may be utilized to solicit MBEs?

3. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of minority businesses.
 - o Is an analysis performed to identify portions of work that can be contracted and performed by qualified MBEs?
 - o Are the elements of the total project scrutinized to develop economically feasible units of work that are within the bonding range of MBEs?
 - o Are bid packages analyzed to afford MBEs maximum participation?
4. Establishing delivery schedules, where requirements of the work permit, which will encourage participation by minority businesses.
 - o Do you consider lead times and scheduling requirements often needed by MBEs?
 - o Do you develop realistic delivery schedules which may provide for greater MBE participation?
 - o Do you consider notifying MBEs of future procurement opportunities so that they may establish bidding, solicitation and procurement plans?
5. Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate.
 - o Do you use the services of outreach programs sponsored by the Minority Business Development Agency and/or the Small Business Administration to recruit bonafide firms for placement on MBEs bidders lists to assist in the development of bid packaging?

- o Do you use these services to provide management, technical and financial assistance to MBEs?
6. If the contractor awards subagreements, requiring the contractors to take the affirmative steps.
- o Do you monitor work in progress to assess actual MBE participation and determine if MBE fair share will be met?
 - o Do you monitor and record contractor and consultants activities to ensure "affirmative steps" are being utilized?
7. Other Actions may include:
- o Do you require the successful contractor to timely submit a subcontracting plan which includes the contractor's strategy for involving MBEs, the name of the contractor's MBE coordinator, a projected dollars amount of MBE utilization, etc.?
 - o Do you appoint knowledgeable MBE liaison officers who are familiar with contracting requirements and are able to assist contractors as well as MBEs?
 - o Does your MBE liaison officer assist contractors in determining whether subcontracting plans are feasible and their goals are attainable?
 - o Does your internal management system ensure effective contract administration of the MBE affirmative steps?
 - o Do you ensure proper reporting of MBE participation?

The recipient is ultimately responsible for ensuring that the contractor awarding subagreements carries out the affirmative steps as required by the regulations. If a fair share objective has been established

for a particular project, but is not achieved the mere fact of non-achievement does not preclude an award, provided that the recipient can demonstrate that the 6 affirmative steps were followed.

The Agency is confident that a fair share of procurement dollars will accrue to minority entrepreneurs if sincere, responsive efforts are made by recipients of funds made available under EPA grants or cooperative agreements.

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