

FAQ

Disadvantaged Business Enterprise (DBE) Solicitation Requirements for Federally Funded PENNVEST Projects

DEFINITIONS:

Compliance Review – the process by which the Department of Environmental Protection (DEP) reviews DBE solicitation. Grant/loan recipients will submit the required documents listed on the Grant/Loan Recipient DBE Compliance Statement, confirming that they have timely applied the Six Good Faith Efforts and met the DBE solicitation requirements as outlined in this DBE Guidance Document.

Disadvantaged Business Enterprise (DBE) – an entity owned and/or controlled by a socially and economically disadvantaged individual(s). There is a large group of DBE entities (i.e. Small Business Enterprise (SBE), Small Business in a Rural Area (SBRA), Labor Surplus Area Firm (LSAF), Historically Underutilized Business Zone (HUBZone), Minority Business Enterprise (MBE), Women’s Business Enterprise (WBE), etc.). *In reference to federally funded PENNVEST projects, however, DBE solicitation efforts imply MBE entities and WBE entities only.*

Fair Share Objectives – a goal based on the capacity and availability of qualified, certified, MBEs and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services, and supplies compared to the number of all qualified entities in the same market for the same procurement categories, adjusted, as appropriate, to reflect the level of DBE participation expected absent the effects of discrimination. It is not a quota.

Postings – notifications of forthcoming opportunities on the project that are submitted to organizations, such as Minority Business Development Agency, and SUB-Net, who provide services and outreach to DBE firms. Postings by such agencies typically should occur at least thirty (30) days prior to bid opening.

Prime Contractor – the entity contracted for work with a recipient that receives federal grant or loan funds under the SRF.

Project Area – refers to the area in which DBE solicitation occurs. At a minimum the project area will be county of the project and the immediate surrounding counties. If the item being procured has an estimated value greater than \$750,000, the project area is the state of Pennsylvania.

Recipient – the entity that receives federal grant or loan funds under Drinking Water State Revolving Loan Fund (DWSRF) or the Clean Water State Revolving Loan Fund (CWSRF), together commonly known as the SRF.

Resolution of Authorized Representative – a formal statement that determines the representative that is authorized to sign on behalf of the grant/loan recipient. The resolution may authorize a “title” or a “named” person. Authorizing a “title” allows a newly elected official the ability to sign without having to obtain a new resolution for instances when one is required.

Self-Performance Letter – a letter submitted by a prime contractor that states that all work to be performed under contract will be done with only the work forces of the company and that all equipment, services and supplies needed to perform all aspects of work under contract will be done with in-house supplies, services, and equipment.

Six Good Faith Efforts – the process used to document in detail the solicitation efforts of DBE (MBE and WBE) firms. The Six Good Faith Efforts is not the number of DBE firms to be solicited for compliance.

Specialized Services – services that are specific to the use/design/installation/construction of technology/equipment related to a special line of work that cannot be obtained or performed by entities not licensed or skilled in the line of service.

Subrecipient – the entity that receives federal grant or loan funds from a recipient of federal grant or loan funds under the SRF.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) FIRM SOLICITATION REQUIREMENTS

Pursuant to 40 CFR, Section 33.301, the recipients of federal funds must provide DBE firms with the opportunity to compete for procurement opportunities by applying the Six Good Faith Efforts.

Pursuant to 40 CFR, Section 33.105, the recipients and subrecipients of federal funds are subject to compliance and enforcement provisions for failure to comply with any requirements.

Pursuant to 40 CFR, Section 33.501, the recipients of federal funds must maintain all records documenting its compliance with the requirements.

Pursuant to 40 CFR, Section 33.302, the recipients of federal funds are subject to additional contract administration requirements.

HOW DO YOU COMPLY WITH THE REQUIREMENTS?

Compliance with the DBE solicitation requirements is done by timely applying the Six Good Faith Efforts, as outlined below. It is necessary for the Six Good Faith Efforts to be documented in detail by both the grant/loan recipient and prime contractor(s) who participate in the project. Grant/loan recipients and prime contractor(s) are required to prepare and maintain detailed documents that show and support compliance and understanding of the DBE regulation set forth in 40 CFR Part 33, 33.301, 33.105, 33.501, and 33.302.

WHAT ARE THE SIX GOOD FAITH EFFORTS?

The Six Good Faith Efforts is a method used to ensure that DBEs are aware of the opportunity to compete for contracts and subcontracts of projects funded by EPA financial assistance dollars. As mentioned in the DBE definition, DBE entities associated with solicitation efforts for federally funded PENNVEST projects are MBE entities and WBE entities. The Six Good Faith Efforts are about creating opportunity for DBE firms. Contract and subcontract awards should go to the lowest responsive, responsible bidder. The Six Good Faith Efforts are:

Ensure DBE firms are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.

Make information on forthcoming opportunities available to DBE firms in a way that encourages and facilitates participation by DBE firms in the competitive bid process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

Consider in the contracting process whether firms competing for large contracts could subcontract with DBE firms. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBE firms in the competitive bid process.

Encourage contracting with a group of DBE firms in a combined effort to meet project requirements when a contract is too large for one of these firms to handle individually.

Use the services and assistance of the Department of General Services (DGS) website to perform the direct search and solicitation of Minority Based Enterprises (MBE) and Women Based Enterprises (WBE) firms that are potential sources for participation in contracting opportunities.

If the prime contractor will award work to subcontractors or purchase supplies or equipment, require the prime contractor to follow the five steps above.

HOW LONG AND WHAT RECORDS MUST BE RETAINED?

Record retention is determined by the applicable record retention requirements for the recipient's financial assistance agreement. Recipients of funds from the CWSRF and DWSRF programs are required to retain records for a minimum period of four (4) years after final amortization of the PENNVEST grant/loan.

WHAT HAPPENS IF COMPLIANCE IS NOT MET?

Failure to comply with the Six Good Faith Efforts subjects a recipient to compliance and enforcement provisions that include, but are not limited to, debarment, termination of available funds, fines, and/or imprisonment. Such enforcement is pursuant to 40 CFR Parts 30, 31, and 35 as appropriate or any other action by law including, but not limited to the enforcement under 18 U.S.C. 1001 and/or Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).