



Disadvantaged Business Enterprise Compliance

The purpose of the Disadvantaged Business Enterprise (DBE) program is to ensure nondiscrimination when awarding contracts and to help remove barriers for DBE participation under EPA financial assistance agreements. As such, federal regulations require that loan recipients (entities that receive an EPA financial assistance agreement, e.g. the SRF through a capitalization grant from EPA) and sub-recipients (i.e., borrowers and prime contractors) comply with 40 CFR Part 33 through prime contracting, subcontracting, joint-venture, procurement of supplies, material or equipment, or other business participation utilized in completing a project. While this guidance is not all encompassing, to ensure compliance with the primary purpose of EPA’s DBE requirements, both **Loan Recipients (Borrowers) and Prime Contractors** must undertake a good-faith effort (40 CFR Part 33 Subpart C) to award a fair share of work to DBEs who are minority business enterprises (MBEs)¹ and women’s business enterprises (WBE’s)². As negotiated with the EPA, Alaska’s DBE participation goals are listed below. The Fair Share Objectives (goals) are not a quota and apply to DBE participation only whereas there is no penalty for no meeting the goals below. These goals represent the percentage value of the construction contract awarded to MBE and WBEs for the project.

Procurement Category	MBE Goal (%)	WBE Goal (%)
Construction	3.26	1.48

Self-certification of a MBE or WBE is prohibited. An entity can certify under the US Small Business Administration’s 8(a) Business Development Program, the US Department of Transportation’s (DOT) Participation by DBE in DOT Programs, an Indian Tribal Government, State Government, local Government, or an independent private organization that certifies entities in accordance with EPA’s 8% or 10% statutes as applicable. The Alaska Department of Transportation and Public Facilities has developed a DBE Directory of certified firms that can assist recipients and contractors in soliciting qualified firms.

Borrowers and Contractors - Good Faith Efforts

The following good faith efforts apply to the procurement of construction, equipment, services, and supplies with SRF financial assistance funds:

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

¹ In order to qualify as a MBE, an entity must be at least 51% owned by a socially or economically disadvantaged individual. See 40 CFR §33.202 and 13 CFR §124.105.

² In order to qualify as a WBE, an entity must be at least 51% owned by women. See 40 CFR §33.202 and 13 CFR §124.105.

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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 Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take steps 1-5 above.

Both the borrower and the prime contractor are required to complete the Alaska SRF's *Disadvantaged Business Enterprise Program Good Faith Effort and Participation Form*. For all contractor/subcontractor bids submitted, the entity receiving the bids is required to keep a copy of the bid on file, along with the Good Faith Effort and Participation form, for no less than the records retention period specified in the borrower's loan agreement.

Borrowers Only – Additional Requirements

Include this form along with the *Disadvantaged Business Enterprise Program Good Faith Effort and Participation Form* in the bid and/or contract documents. Additionally, borrowers are required to semiannually report MBE and WBE participation in prime contracts and subcontracts through the Online Application System (OASys), the Alaska Department of Environmental Conservation web-based application for submitting loan and reporting documentation.

Contractors Only – Additional Requirements

Comply with the following (40 CFR Part 33, Appendix A):

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 the termination of this contract or other legally available remedies.

The prime contractor must pay its subcontractors no more than 30 days after receipt of payment from the borrower when satisfactory work has been performed. Additionally, the prime contractor is required to notify the borrower prior to any termination of a DBE subcontractor. If subcontractor fails to perform the work under a subcontract, the prime contractor will employ the six Good Faith Efforts described above in seeking a replacement. The prime contractor must employ the six Good Faith Efforts even if the MBE and WBE goals have been met (also called the Fair Share Objectives).

The undersigned certifies that this recipient/contractor is aware that the above guidance is a summary of the requirements EPA's Disadvantaged Business Enterprise regulations and is not all encompassing. Further, the undersigned certifies they will comply with all applicable federal regulations in 40 CFR Part 33. Failure to demonstrate a Good Faith Effort through solicitation of minority-owned businesses or women-owned businesses can result in ineligible expenses under the loan.

Print Name	Organization Name
Authorized Representative's Signature	Date

Disadvantaged Business Enterprise (DBE) Program Good Faith Effort and Participation Form

This form is intended to capture an EPA financial assistance agreement recipient'sⁱ or sub-recipient'sⁱⁱ anticipated and actual use of certified DBEs. Alaska SRF recipients and prime contractor must complete this form and include it in the bid or proposal package when applicable. A copy of this form should be kept on file.
Instructions:

Step 1. Please provide list of all DBEs that you solicited.

Option A. Provide pdf of all email solicitation to DBEs.

Option B. Fill contact information portion of table below for all DBEs solicited.

Step 2. For any DBE you intend to utilize, please provide the additional information for the contractor or subcontractor.

Project Name:				Contract/Project Number:		
Contract Amount:				Organization Name:		
Step 1: Contact Information					Step 2: Utilization Information	
Company Name	Contact Phone/Email/Address	Responsive	Are you intending to hire this firm?	Description of work	Contract Amount	MBE/WBE

Total Contract Amount of Utilized Companies (\$)

The current goals established for the State of Alaska are as follows:

MBE: 3.26%

WBE: 1.48%

DBE Total: 4.74%

MBE Participation (%)	WBE Participation (%)	Total DBE Participation (%):

I certify under penalty of perjury that the forgoing information is true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of, that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Print Name:		Organization Name:
Authorized Representative's Signature:		Date:

ⁱ An entity that receives an EPA financial assistance agreement or is a sub-recipient of such agreement, including loan recipients under the Clean Water State Revolving Fund Program, Drinking Water State Revolving Fund Program, and the Brownfields Cleanup Revolving Loan Fund Program.

ⁱⁱ Borrowers of the SRF Program