

qualified MBEs, with the resulting number becoming the numerator of the base figure. The denominator could then be derived from the Census Bureau's County Business Pattern (CBP) Database. The CBP Database contains all available businesses in the recipient's relevant geographic market organized by Standard Industrial Code (SIC code). SIC codes have been converted to North American Industrial Classification System (NAICS) codes. For purposes of the following discussion, NAICS codes may be substituted for SIC codes. The recipient may then combine all available businesses pertaining to construction, for example, and use this number as the denominator in the base figure for that particular procurement category.

EPA has a link to the Census Bureau's website at osdbuweb.dot.gov/business/dbe/abe.pdf. Utilizing this data, recipients would be able to customize their base figure within each procurement category. For example, major construction SIC codes are 15, 16 and 17. If a recipient estimates it will spend 10% of its federal funds within SIC code 15, 40% in SIC code 16, 25% in SIC code 17, and the remaining 25% on contracting spread over SIC codes 35 (equipment) and 87 (services), the recipient could separately determine the availability of MBEs for each of the SIC codes and weight each according to the amount of money to be spent in each area. In this example, the recipient could calculate its weighted base figure by first determining the number of MBEs in its directory for each of the SIC codes, then extracting the availability of CBP businesses for the same SIC codes. The recipient would then perform the following calculation to arrive at a base figure for step one of the objective setting process for MBEs.

$$\text{Numerator} = [.10 (\text{MBEs in SIC code 15}) + .40(\text{MBEs in SIC code 16}) + .25(\text{MBEs in SIC code 17}) + .25(\text{MBEs in SIC codes 35 \& 87})] \times 100$$

$$\text{Denominator} = \text{CBPs in SIC code 15} + \text{CBPs in SIC code 16} + \text{CBPs in SIC code 17} + \text{CBPs in SIC codes 35 \& 87}$$

$$\text{Base Figure} = \frac{\text{Numerator}}{\text{Denominator}}$$

This formula is offered only as an example of how a recipient could choose to use the CBP Database. Recipients using the CBP data could choose whether to weight their calculation, and whether to do so by individual SIC codes or by groups of SIC codes, based on their own assessment of which method will best fit their spending patterns.

EPA is proposing to allow a recipient to negotiate separate MBE and separate WBE fair share objectives for each of the four procurement categories of construction, equipment, services and supplies or, at its option, negotiate a combined weighted objective for these four procurement category objectives for MBEs and separately for WBEs. This proposed approach would give recipients flexibility in preparing their availability analyses.

Several issues arise when comparing numbers from two different data sources. First, recipients will need to ensure that the scope of businesses included in the numerator is as close as possible to the scope included in the denominator. A recipient using its own MBE and WBE directories will still need to determine a similar scope for the fields it will use for the denominator. A good way for a recipient to do this would be to examine its contracting program and determine the SIC codes for the majority of its contracts. While it may be sufficient for some recipients to use their State borders as the boundaries for their relevant geographic market, this may not be appropriate for other recipients whose relevant geographic market may extend beyond their State borders. Conversely, the relevant geographic market for some recipients may be a specific region within a State's borders.

An alternative means of calculating the numerator is to use a bidders list. Under this approach the recipient would measure availability by the number of firms that have previously competed in the recipient's procurement process. The recipient must include all firms that have competed for prime and/or subcontracts.

In the category of construction, most MBE and WBE participation occurs through subcontracting. It is therefore crucial that all firms competing for subcontracts be included in the bidders list. EPA encourages recipients to use any sources of local data which allows them to make a more accurate calculation.

(B) Data From a Disparity Study

Another option for a recipient in determining a base figure is using a disparity study. Disparity studies involve comparing available MBE and WBE contractors with the contracts actually awarded to them. They generally are based on statistics which measure MBE and WBE utilization and anecdotal evidence showing that the underutilization of MBEs and WBEs is caused by conditions other than chance.

These studies may be expensive and time consuming to perform.

EPA is not requiring a recipient to conduct a disparity study. EPA is also not specifying the data or analysis required in a disparity study since the design and conduct of the study are best left to recipients and the professional organizations with which they contract to perform the studies. If a disparity study is used it must address MBE and WBE utilization under the four procurement categories and be no more than ten years old. The fact that a disparity study utilized in negotiating fair share objectives has become more than ten years old during the three year period does not by itself constitute a significant change requiring renegotiation.

(C) The Objective of Another EPA Recipient

A recipient may also use another EPA recipient's MBE and WBE objectives if they were established in accordance with this Rule and were based on a substantially similar relevant geographic market. For example, a non-State agency recipient may use a State agency's MBE and WBE fair share objectives, but only if the non-State agency uses a substantially similar geographic market. Otherwise, the non-State Agency recipient would have to negotiate its own MBE and WBE fair share objectives with EPA based on the availability of MBEs and WBEs in its relevant geographic market. With the proposed exemption from the fair share objective negotiation process, the number of recipients who would be required to separately negotiate with EPA would be substantially reduced.

(D) Alternative Methods

This proposal also includes an option for recipients to propose an alternative method for calculating MBE and WBE base figures. Recipients may use this option to take advantage of any unique expertise or source of data that may not be available to other recipients, such as a comparable objective negotiated with DOT. EPA will consider any such proposal that recipients believe will better reflect their relevant market than any of the examples provided in this Rule.

Step 2: Adjusting the Base Figure for the MBE and WBE Objectives

Once a recipient has derived base figures for its proposed MBE and WBE objectives, it must then consider whether an adjustment from the Step 1 MBE and WBE base figures is appropriate. This second step is needed to ensure that objectives more