

Environmental Protection Agency

§ 33.302

any other source, including the EPA Office of Inspector General; Federal, State, or local law enforcement authorities; an EPA recipient; or a private party.

(f) Consistent with Federal law, the Director shall make available, upon the request of the appellant, challenger or the entity affected by the Director's appeal or challenge decision, any supplementary information the Director receives from any source as described in paragraph (e) of this section.

(g) Pending the Director's appeal or challenge decision, EPA OSDBU's MBE or WBE certification determination remains in effect. The Director does not stay the effect of its MBE or WBE certification determination while he/she is considering an appeal or challenge.

(h) The Director shall reverse EPA OSDBU's MBE or WBE certification determination only if there was a clear and significant error in the processing of the certification or if EPA OSDBU failed to consider a significant material fact contained within the entity's application for MBE or WBE certification.

(i) All decisions under this section are administratively final.

§ 33.212 What conduct is prohibited by this subpart?

An entity that does not meet the eligibility criteria of this subpart may not attempt to participate as an MBE or WBE in contracts awarded under EPA financial assistance agreements or be counted as such by an EPA recipient. An entity that submits false, fraudulent, or deceitful statements or representations, or indicates a serious lack of business integrity or honesty, may be subject to sanctions under § 33.105.

Subpart C—Good Faith Efforts

§ 33.301 What does this subpart require?

A recipient, including one exempted from applying the fair share objective requirements by § 33.411, is required to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, even if it has achieved its fair

share objectives under subpart D of this part:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) 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.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, 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.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

§ 33.302 Are there any additional contract administration requirements?

(a) A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.

(b) A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

(c) If a DBE subcontractor fails to complete work under the subcontract