

requirements and the Agency's standard of review.

Section 33.217 What Conduct Is Prohibited by This Subpart?

This provision prohibits false, fraudulent or deceitful conduct on the part of entities attempting to participate in the DBE Program. It has been placed in the Rule in order to protect the integrity of the DBE Program.

Subpart C—Good Faith Efforts

Section 33.301 What Does This Subpart Require?

The good faith efforts required by this section are activities by a recipient or its prime contractor to increase DBE awareness of procurement opportunities through race/gender neutral efforts. Race/gender neutral efforts are ones which increase awareness of contracting opportunities in general, including outreach, recruitment and technical assistance. The good faith efforts must be made by a recipient and its prime contractor toward all DBEs, including SBEs, LSAFs and SBRA's and not just MBEs and WBEs, even if the fair share objective requirements of Subpart D have been met.

For purposes of simplification, EPA has combined the six positive efforts of 40 CFR 30.44(b) applicable to institutions of higher education, hospitals and other non-profit organizations with the six affirmative steps of 40 CFR 31.36(e) applicable to Indian Tribal, State, and local Government recipients and renamed them the six "good faith efforts." is not the intention of the Agency to change the substance of the positive efforts or the affirmative steps.

The six good faith efforts required by this section must be performed by all recipients (including recipients who have been exempted under § 33.411 from the requirements of applying fair share objectives) and their prime contractors, if they award subcontracts, for the procurement categories of construction, equipment, services (including consulting services) and supplies. EPA offers the following examples to assist recipients and prime contractors in carrying out the good faith efforts.

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

(a) Maintain and update a listing of qualified DBEs that can be solicited for

construction, equipment, services and/or supplies.

(b) Provide listings to all interested parties who request copies of the bidding or proposing documents.

(c) Contact appropriate sources within your geographic area and State to identify qualified DBEs for placement on your DBE business listings.

(d) Utilize other DBE listings such as those of the State's Minority Business Office, the Small Business Administration, Minority Business Development Agency (MBDA) of the Department of Commerce, EPA OSDBU, and DOT.

(e) Have State environmental agency personnel review solicitation lists.

(2) Make information of 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.

(a) Develop realistic delivery schedules which may provide for greater DBE participation.

(b) Advertise through the minority media in order to facilitate DBE utilization. Such advertisements may include, but are not limited to, contracting and subcontracting opportunities, hiring and employment, or any other matter related to the project.

(c) Advertise in general circulation publications, trade publications, State agency publications and minority and women's business focused media concerning contracting opportunities on your projects. Maintain a list of minority and/or women's business-focused publications that may be utilized to solicit DBEs.

(3) 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 in order to increase opportunities for participation by DBEs in the competitive process.

(a) Perform an analysis to identify portions of work that can be divided and performed by qualified DBEs.

(b) Scrutinize the elements of the total project to develop economical units of work that are within the bonding range of DBEs.

(c) Conduct meetings, conferences, and follow-ups with DBE associations

and minority media to inform these groups of opportunities to provide construction, equipment, services and supplies.

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

(a) Notify DBEs of future procurement opportunities so they may establish bidding solicitations and procurement plans.

(b) Provide DBE trade organizations with succinct summaries of solicitations.

(c) Provide interested DBEs with adequate information about plans, specifications, timing and other requirements of the proposed projects.

(5) Use the services and assistance of the SBA and the MBDA.

(a) Use the services of outreach programs sponsored by the MBDA and/or the SBA to recruit bona fide firms for placement on DBE bidders lists to assist these firms in the development of bid packaging.

(b) Seek out Minority Business Development Centers (MBDCs) to assist recipients and prime contractors in identifying DBEs for potential work opportunities on projects.

Appropriate use of the services and assistance of the SBA and the MBDA depends on the circumstances. It may involve using the services of outreach programs sponsored by the MBDA and/or the SBA to recruit bona fide firms for placement on DBE bidder's lists to assist the firms in the development of bid packages. Recipients and prime contractors may use SBA's Pro-Net Procurement Marketing and Access Network services to identify available DBEs to do the work. Recipients and prime contractors may utilize MBDCs for assistance in identifying DBEs for potential work opportunities on contracts under EPA financial assistance agreements, as well as using MBDA's Phoenix dBASE System to identify available DBEs to do the work.

(6) If the prime contractor awards subcontracts, require the prime contractor to take the steps in subparagraphs (1)–(5) of this section.

Section 33.302 Are There Any Additional Contract Administration Requirements?

The first provision of this section is intended to ensure that subcontractors receive prompt payment from prime contractors. The other provisions of this section, including the requirement to complete the forms mentioned below, are intended to prevent any "bait and switch" tactics at the subcontract level by prime contractors which may