



**Rules of
Office of Administration
Division 40—Purchasing and Materials
Management
Chapter 1—Procurement**

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**Title 1—OFFICE OF
ADMINISTRATION
Division 40—Purchasing and
Materials Management
Chapter 1—Procurement**

1 CSR 40-1.010 Organization

PURPOSE: This rule provides the public with a description of the Division of Purchasing and Materials Management within the Office of Administration. This rule fulfills the statutory requirement of section 536.023(3), RSMo.

(1) The Division of Purchasing and Materials Management is responsible for the procurement of supplies, equipment and services for state departments.

(2) In addition to procurement activities, the division is also responsible for the following activities:

(A) Administration of the state and federal surplus property program;

(B) Operation of the cooperative procurement program for political subdivisions of the state; and

(C) Coordination of the state recycling program.

AUTHORITY: sections 34.050 and 536.023, RSMo Supp. 1999. Original rule filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000, effective Oct. 30, 2000.*

**Original authority: 34.050, RSMo 1939, amended 1945, 1993, 1995; and 536.023, RSMo 1975, amended 1976, 1977.*

1 CSR 40-1.030 Definitions

PURPOSE: This rule defines terms used in this chapter.

(1) As used in this chapter unless the content clearly indicates otherwise, the following terms shall mean:

(A) Bid/proposal security. A financial guarantee that the bidder/offeror, if selected, will accept the contract as bid;

(B) Commissioner. The commissioner of the Office of Administration;

(C) Contract. A legal and binding agreement between two (2) or more competent parties, for a consideration for the procurement of supplies;

(D) Debarment. An exclusion from contracting with the state for an indefinite period of time;

(E) Director. The director of the Division of Purchasing and Materials Management;

(F) Division. The Division of Purchasing and Materials Management within the Office of Administration;

(G) Minority. The definition contained in 1 CSR 10-17.010(1)(G) will be applied;

(H) Minority business enterprise (MBE). The definition in section 37.020.1(3), RSMo, will be applied;

(I) Multiple award. A purchase order or contract awarded to two (2) or more bidders required to meet the needs of agencies;

(J) OA. The Office of Administration;

(K) Performance security. A financial guarantee that the successful bidder/offeror will complete the contract as agreed;

(L) Service-disabled veteran. The definition contained in section 34.074, RSMo, will be applied;

(M) Service-disabled veteran business enterprise (SDVE). The definition contained in section 34.074, RSMo, will be applied;

(N) Solicitation. The process of notifying prospective bidders that the state wishes to receive bids or proposals to provide supplies. The term includes request for proposal (RFP), request for quotation (RFQ), invitation for bid (IFB), single feasible source (SFS), and any other appropriate procurement method;

(O) State. The state of Missouri;

(P) Suspension. An exclusion from contracting with the state for a temporary period of time; and

(Q) Women's business enterprise (WBE). The definition in section 37.020.1(6), RSMo, will be applied.

AUTHORITY: section 34.050, RSMo 2000 and section 34.074, RSMo Supp. 2010. Original rule filed Oct. 15, 1992, effective June 7, 1993. Rescinded and readopted: Filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000, effective Oct. 30, 2000. Amended: Filed June 1, 2011, effective Nov. 30, 2011.*

**Original authority: 34.050, RSMo 1939, amended 1945, 1993, 1995 and 34.074, RSMo 2008, amended 2010.*

1 CSR 40-1.040 Authority Delegations

PURPOSE: This rule describes the procedure for delegating procurement authority as provided under section 34.100, RSMo.

(1) Agencies, universities, or colleges may be delegated general procurement authority. This delegated authority may stipulate dollar limits and other limits for specific types of purchases. The written delegation of authori-

ty shall stipulate the procedures which must be followed for procurements processed by the agencies, universities, and colleges.

(2) Agencies, universities, or colleges may be delegated authority for special types of procurements on an individual basis for a limited time period. The written authorization shall indicate the procedures that shall be followed in making such procurements.

(3) Procurements not delegated to the agency, university, or college must be referred to the division for processing.

AUTHORITY: section 34.050, RSMo Supp. 1997. Original rule filed Oct. 15, 1992, effective June 7, 1993. Rescinded and readopted: Filed Oct. 20, 1997, effective May 30, 1998.*

**Original authority: 34.050, RSMo 1939, amended 1945, 1993, 1995.*

1 CSR 40-1.050 Procedures for Solicitation, Receipt of Bids, and Award and Administration of Contracts

PURPOSE: This rule prescribes procedures for soliciting and receiving bids and for awarding contracts.

(1) When the procurement is estimated to be less than twenty-five thousand dollars (\$25,000), an informal method of solicitation may be utilized. Informal methods of procurement may include Request for Quotation (RFQ), telephone quotes, etc.

(A) The division will establish a target date and time for submission of informal bids.

(B) The division may proceed with the evaluation and award anytime after the expiration of the target date and time. Bids received after the target date and time, but before the award of a contract, may be included in the evaluation at the discretion of the division.

(2) When the procurement is estimated to be twenty-five thousand dollars (\$25,000) or more, a formal method of solicitation must be utilized. Formal competitive bidding may be accomplished by utilizing an Invitation for Bid (IFB). Pursuant to section 34.047, RSMo, information technology purchases estimated not to exceed seventy-five thousand dollars (\$75,000) may be completed under an informal process provided the procurement does not exceed twelve (12) months and it is posted on the division online bidding/vendor registration system website.

(A) Formal bids should be received in the



division or a secured electronic database in a sealed format by the time set for the opening of bids.

(B) Formal bids received after the time set for the opening of bids shall be considered late and will not be opened except in those circumstances described below.

(C) Under extraordinary circumstances, the director or designee, may authorize the opening of a late bid. In such cases, the bid must have been turned over to the physical control of an independent postal or courier service with promised delivery time prior to the time set for the opening of bids. All such decisions are at the sole discretion of the director or designee. The following guidelines may be utilized to determine the criteria for an extraordinary circumstance:

1. State offices were closed due to inclement weather conditions;
2. Postal or courier services were delayed due to labor strikes or unforeseen "Acts of God"; or
3. Postal or courier service did not meet delivery time promised to the bidder/offeror. In such a case, the bidder/offeror must provide written proof from the delivery service that promised delivery time was prior to the time set for the opening of bids.

(D) Bids received in response to an IFB shall be available for public review after the bid opening during regular working hours.

(E) When the division decides that all bids are unacceptable and circumstances do not permit a rebid, negotiations may be conducted with only those bidder/offerors who submitted bids in response to the IFB. No additional bidder/offerors may be solicited. Upon determination that negotiations will be conducted, the bids and related documents will be closed to public viewing in accordance with section 610.021, RSMo. All negotiations will be conducted in accordance with the competitive negotiation provisions provided for in these regulations, or as provided for in the solicitation, if applicable.

(3) When the procurement requires the utilization of competitive negotiation, the formal Request for Proposal (RFP) solicitation method should be utilized.

(A) Formal proposals should be received in the division or a secured electronic database in a sealed format by the time set for the opening of the proposals.

(B) Formal proposals received after the time set for the opening of proposals shall be considered late and will not be opened, except in those circumstances described below.

(C) Under extraordinary circumstances, the director or designee may authorize the

opening of a late proposal. In such cases, the proposal must have been turned over to the physical control of an independent postal or courier service with promised delivery time prior to the time set for the opening of proposal. All such decisions are at the sole discretion of the director or designee. The following guidelines may be utilized to determine the criteria for an extraordinary circumstance:

1. State offices were closed due to inclement weather conditions;
2. Postal or courier services were delayed due to labor strikes or unforeseen "Acts of God"; or
3. Postal or courier service did not meet delivery time promised to the offeror. In such a case, the offeror must provide written proof from the delivery service that promised delivery time was prior to the time set for the opening of proposals.

(D) Proposals received in response to an RFP shall not be available for public review until after a contract is awarded or all proposals are rejected.

(E) Offerors who obtain information concerning a competitor's proposal may be disqualified for consideration for a contract award.

(4) When the supplies meet the criteria delineated in section 34.044, RSMo, the division may elect to utilize the Single Feasible Source procurement method. The following delineates additional guidelines and examples to determine satisfaction of the criteria:

(A) The following guidelines may be utilized to determine if supplies may be purchased as a single feasible source due to being proprietary, although the following list is not intended to be exhaustive:

1. The parts are required to maintain validity of a warranty;
2. Additions to a system must be compatible with original equipment;
3. Only one (1) type of computer software exists for a specific application;
4. Factory authorized maintenance must be utilized in order to maintain validity of a warranty;
5. The materials are copyrighted and are only available from the publisher or a single distributor; and
6. The services of a particular provider are unique (e.g., entertainers, authors, etc.);

(B) If past procurement activity indicates that only one (1) bid has been submitted in a particular region, a single feasible source procurement may be authorized. In these situations the division will monitor the market for developing competition;

(C) The following guidelines will be utilized to determine if supplies may be pur-

chased as a single feasible source due to being available at a discount for a limited period of time:

1. The discounted price must be compared to a price established through a reasonable market analysis (i.e., competitive solicitation for the same item under similar circumstances); and

2. The discounted price should normally be at least ten percent (10%) less than the current contract or other comparable price. A discount of less than ten percent (10%) may be acceptable under appropriate market conditions. The discount should be compared to a price which, where feasible, should be no more than twelve (12) months old; and

(D) A vendor shall notify the division if, in his or her opinion, there is another feasible source for the supplies. Such notification shall be received by the division within the advertising requirement stated in section 34.044, RSMo. A review of the notification shall be made by the division and its decision shall be final.

(5) When conditions meet the criteria outlined in section 34.045, RSMo, emergency procurement procedures may be utilized. The requirement for formal competitive bids or proposals may be waived. However, the emergency procurement should be made with as much informal bidding as practicable. Emergency procedures should only be utilized to purchase those supplies which are necessary to alleviate the emergency.

(6) When circumstances dictate that it would be most advantageous, the state may purchase supplies from, or in cooperation with, another governmental entity pursuant to section 34.046, RSMo.

(A) Supplies purchased from another governmental entity should be limited to those supplies which are provided directly by such entity.

(B) Supplies purchased in cooperation with another governmental entity may be purchased based on contracts established in accordance with that entity's laws and regulations.

(7) Regardless of the solicitation method utilized, the following procedures shall apply:

(A) The division shall develop standardized terms and conditions to be included with the solicitation documents;

(B) The division may request bids/proposals for new, used, rebuilt, or remanufactured equipment employing the trade-in of used equipment. The solicitation document may request pricing with a trade-in and without a trade-in;



(C) The division may require bid/proposal security and/or performance security.

1. The acceptable form and amount of the bid/proposal security shall be stipulated in the solicitation document.

2. The bid/proposal securities of unsuccessful bidders/offerors may be returned after the finalization of the award. If the successful bidder/offeror fails to accept the contract, the amount of the bid/proposal security may be forfeited to the state.

3. If a performance security is required, the bid/proposal security of the successful bidder/offeror may be returned after the receipt of the performance security. The acceptable form and amount of the performance security will be stipulated in the solicitation document. If the contractor fails to submit the performance security as required, the bid/proposal security may be forfeited to the state and the contract shall be void;

(D) In the event that the division receives a container which is not identifiable as a specific bid/proposal, an authorized person within the division may open the container to determine the contents. If the contents are determined to be a bid/proposal, the container will be resealed and the solicitation number, opening date, and time will be noted on the outside. The container will then be filed until the official time for opening;

(E) After the bid/proposal opening, a bidder/offeror may be permitted to withdraw a bid/proposal prior to award at the sole discretion of the division if there is a verifiable error in the bid/proposal and enforcement of the bid would impose an unconscionable hardship on the bidder/offeror. This withdrawal will be considered only after receipt of a written request and supporting documentation from the bidder/offeror. Withdrawal shall be the bidder/offeror's sole remedy for an error other than an obvious clerical error. Withdrawal of a bid/proposal may result in forfeiture of the bid/proposal security;

(F) In accordance with section 34.353, RSMo, for bids/proposals with a value of twenty-five thousand dollars (\$25,000) or more, bidders/offerors who can certify that goods or commodities to be provided in accordance with the contract are manufactured or produced in the United States or imported in accordance with a qualifying treaty, law, agreement, or regulation shall be entitled to a ten percent (10%) preference as stated below over a bidder/offeror whose products do not qualify. Failure to provide a certification may result in forfeiture of any preference. All solicitation responses for the purchase of goods or commodities, except software, with an estimated value of twenty-five thousand dollars (\$25,000) or more must

include proof of compliance requirements as stated in the solicitation document. If the division has any questions regarding either the information submitted on the form or the lack of a submitted form by a bidder/offeror, the division may contact the bidder/offeror for clarification before completing the cost evaluation if under consideration for award. If the division determines that an American-made product is competing against a foreign-made product, the division shall multiply the cost of the foreign-made product by ten percent (10%) and add this amount to the actual cost of the bid/proposal to reflect the Buy American preference in the cost evaluation. The division shall consider any applicable exceptions, including those set by statute or executive order, to the Buy American preference before awarding any contract;

(G) In addition to cost, subjective and any other criteria deemed in the best interest of the state may be utilized in the evaluation of bids/proposals provided that the criteria are published in the solicitation document;

(H) The division may request samples for evaluation purposes. Any samples requested must be provided free of charge. Samples which are not destroyed by testing will be returned at the bidder/offeror's expense if return of the samples is stipulated in the bidder/offeror's bid/proposal. Samples submitted by a bidder/offeror who receives the award may be kept for the duration of the contract for comparison with shipments received;

(I) During the course of a solicitation, bidders/offerors may be required to demonstrate proposed products. Such demonstration shall be coordinated by the division;

(J) When bids/proposals are equal in all respects, any preferences shall be applied in accordance with applicable statute. If all such bidder/offerors or none qualify for the statutory preference, the contract shall be awarded by a formal drawing of lot. Whenever practical, the drawing will be held in the presence of the bidders/offerors who are considered equal. If this is not practical, the drawing will be witnessed by at least two (2) disinterested persons;

(K) The division may make multiple awards from a single solicitation document when such awards are in the best interest of the state;

(L) After an award is made, the solicitation file or facsimile thereof shall be made available to the public for inspection via the Internet;

(M) Neither a contractor nor a state agency shall assign any interest in a contract to another party without written permission from the division;

(N) Unless otherwise specified in the contract, substitution of items, personnel, or services shall require the approval of the division prior to shipment or performance;

(O) Employees of the division, evaluators, and any other persons involved in procurement decisions shall not accept for personal benefit gifts, meals, trips, or any other thing of significant value or of a monetary advantage, directly or indirectly, from a vendor; and

(P) Bidders/offerors on a list of individuals, entities, and contractors excluded from federal procurement and sales programs, non-procurement programs, and financial and non-financial benefits as provided by the General Services Administration (GSA) are precluded from contracting with the state when the procurement involves federal funds.

(8) Contracts awarded as the result of a competitive solicitation may be amended when such an amendment is in the best interest of the state and does not significantly alter the original intent or scope of the contract.

(9) A bid or proposal award protest must be submitted in writing to the director or designee and must be received by the division within ten (10) business days after the date of award. If the tenth day falls on a Saturday, Sunday, or state holiday, the period shall extend to the next state business day. A protest submitted after the ten (10) business-day period shall not be considered. The written protest should include the following information:

(A) Name, address, and phone number of the protester;

(B) Signature of the protester or the protester's representative;

(C) Solicitation number;

(D) Detailed statement describing the grounds for the protest; and

(E) Supporting exhibits, evidence, or documents to substantiate claim.

A protest which fails to contain the information listed above may be denied solely on that basis. All protests filed in a timely manner will be reviewed by the director or designee. The director or designee will only issue a determination on the issues asserted in the protest. A protest, which is untimely or fails to establish standing to protest, will be summarily denied. In other cases, the determination will contain findings of fact, an analysis of the protest, and a conclusion that the protest will either be sustained or denied. If the protest is sustained, remedies include canceling the award. If the protest is denied, no further action will be taken by the division.



(10) Section 34.165, RSMo, provides for a ten- (10-) point bonus on bids/proposals submitted by qualified nonprofit organizations for the blind and qualified sheltered workshops, if the participating organization provides the greater of two percent (2%) or five thousand dollars (\$5,000) of the total contract value of bids/proposals for a purchase not exceeding ten (10) million dollars.

(A) The bonus points can apply if the bidder/offeree is a qualified organization for the blind or sheltered workshop or if the bidder/offeree is subcontracting with an organization for the blind or sheltered workshop.

(B) Supplies provided by an organization for the blind or sheltered workshop must provide a commercially useful function that offers added value to a contract. Supplies shall be provided exclusive to the performance of a contract, and the organization's obligation outside of a state contract shall not be considered an added value. Services or supplies to be provided by an organization that are outside the usual and customary business of the organization may be considered not to offer added value.

1. An organization performs a commercially useful function when it is responsible for executing a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, managing, or supervising the work involved. To perform a commercially useful function, the organization must also be responsible, when applicable, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

2. To determine whether an organization is performing a commercially useful function, the division may evaluate the amount of work subcontracted, whether the amount the organization is to be paid under the contract is commensurate with the work it is actually performing and the organization's credit claimed for its performance of the work, and other relevant factors.

3. An organization does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of an organization's participation. In determining whether an organization is such an extra participant, the division may examine similar transactions, particularly those in which organizations do not participate.

(C) The bonus shall not apply if the solicitation is for a no-cost option to the state.

(D) The bidder/offeree shall submit documents as required by the solicitation that: 1)

describes the products or services the organization for the blind or sheltered workshop will provide and the percentage or dollar level of the participation which must meet or exceed the minimum participation amount specified in section 34.165, RSMo; 2) indicates the organization for the blind and sheltered workshop's commitment to aid the bidder/offeree in the performance of the required services and the provision of the required products; 3) provides evidence of the organization for the blind and sheltered workshop qualifications such as a copy of the certification or certification number; and 4) includes affirmation from each organization for the blind and sheltered workshop that it is willing to participate in the contract in the kind and amount of work provided in the bidder/offeree's response.

(E) If all requirements are met, the bidder/offeree shall receive a ten (10)-point bonus to a bid/proposal meeting specifications or bid/proposal that includes subjective or other criteria deemed in the best interest of the state and provided in the solicitation document.

(F) If the bid/proposal is awarded, the percentage or dollar level of the organization for the blind or sheltered workshop participation committed to by the bidder/offeree in required documentation shall be a binding contractual requirement.

(G) For procurements which utilize the award criteria of low bid meeting specifications, the following procedure will be followed in applying this preference:

1. If the low priced bidder qualifies for the preference, no further calculation is necessary;

2. If a bidder that qualifies for the preference is not low bid, the division will convert the pricing to a point comparison as outlined in the solicitation;

3. For procurements that utilize a combination of cost and subjective criteria for evaluation and award recommendation, ten (10) bonus points will be added to the evaluation points for any preference qualified bidders/offerees; and

4. The bidder/offeree with the most total points is recommended for contract award.

(H) Once a contract is awarded, a contractor shall submit on or before the fifteenth of the month immediately following the reporting period, unless another timeframe is approved by the division, until full payment is made a report detailing all payments it made to all organizations for the blind and sheltered workshops participating in the contract. This is not required if the organization for the blind or sheltered workshop is acting as a prime contractor. However, it may be required if the

prime contractor is also using other subcontractors to meet required goals outlined in the contract. The report shall be submitted to the division on a division form. The division may waive this reporting requirement at any time for good cause.

1. No dollar value of work performed under a contract by an organization for the blind and sheltered workshop after it has ceased to be certified can be counted.

2. The participation of a sheltered workshop on a contract cannot be counted until the amount being counted has actually been paid to the organization for the blind and sheltered workshop.

(I) An organization for the blind and sheltered workshop participation will be credited by the division only for the value of the work actually performed by the entity toward the division individual contract percentage or dollar level, including cost of supplies and materials obtained or leased by the entity. The total dollar value of the work granted to the entity by the prime contractor is counted toward the applicable contract requirement. When counting an entity for the organization for the blind and sheltered workshop participation, the division will consider the following:

1. A contractor's entire expenditure to be paid to an organization for the blind and sheltered workshop supplier or manufacturer for material furnished which becomes a permanent part of the contract work. For the purpose of this regulation, a manufacturer shall be defined as an individual or firm that produces goods from raw materials or substantially alters them before resale and is a qualified organization for the blind and sheltered workshop;

2. By counting the work an organization for the blind and sheltered workshop contractor commits to perform with its own labor as well as the work that it commits to perform with organization for the blind and sheltered workshop subcontractors and suppliers;

3. When an organization for the blind and sheltered workshop performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the organization for the blind and sheltered workshop performs with its own forces shall count toward individual contract percentages or dollar levels; and

4. When an organization, during the contract, is presumed not to be performing a commercially useful function as provided in subsection (10)(B) of this rule, the organization may present evidence to rebut this presumption. The director may determine that



the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(J) If a participating entity is unable to satisfactorily perform its organization for the blind and sheltered workshop participation level, or if there are other reasons the contractor needs to replace an entity, the contractor must obtain written approval from the division prior to replacing the entity. If approved, the contractor must obtain other participation in compliance with its original commitment as approved by the division. The division's approval shall not be arbitrarily withheld. If the contractor cannot obtain a replacement, it may apply to the division for a participation waiver by providing documentation detailing all efforts made to secure a replacement and a good cause statement establishing why the participation level cannot be obtained. If the contractor has met its burden of proof, the division may grant a waiver for good cause.

(K) If the contractor's participation level or payment to a participating organization for the blind and sheltered workshop entity is less than the amount committed, and no waiver for good cause has been obtained, the division may cancel the contract and/or suspend or debar the contractor from participating in future state procurements or withhold payment to the contractor in an equal amount to the value of the participating commitment less actual payments made by the contractor to the participating entity. If the division determines that a contractor has become compliant with the commitment amount, any withheld funds shall be released.

(L) At the time of contract renewal, a contractor must verify it is meeting its participation level and required payment to all organization for the blind and sheltered workshop entities, or the contractor must submit a statement of when such blind and sheltered participation is scheduled to occur. If the contractor is not meeting said requirements, the contract renewal may not be processed unless and until said requirements are satisfactorily met, a cure plan is approved, the statement is accepted by the division, or a waiver for good cause is obtained from the division.

(11) The division will encourage participation in the procurement process and fairness in consideration of bids/proposals submitted by Missouri Service-Disabled Veteran Business Enterprises (SDVEs). Programs/procedures designed to accomplish these objectives may include: inclusion of SDVE subcontractor goals in solicitation documents; close review of requirements for bonding; notice of procurement opportunities on the division's web-

site; access to bid history and pricing abstracts on the division's website; access to the division's procurement staff; utilization of service-disabled personnel on evaluation committees, if available; etc.

(A) The division will compile, maintain, and make available a listing of SDVEs. The listing shall be made available to all bidders/offerors and contractors on the division's website. The listing may include the following: name; address; contact information of SDVE; the general area of commodities or services it provides; etc. The division shall also maintain statistics and issue periodic reports about SDVE participation.

(B) The following expenditures may be counted toward meeting established SDVE goals:

1. The total dollar value of a contract awarded to an SDVE;
2. The total dollars paid by a prime contractor to an SDVE for supplies and materials provided to the state in fulfillment of the contract;
3. The total dollar value of work subcontracted to an SDVE by a prime contractor; and
4. That portion of the total dollar value subcontracted to a joint venture by a prime contractor equal to the percentage of the ownership and control of the SDVE partner in the joint venture.

(C) Section 34.074, RSMo, established a goal of awarding three percent (3%) of all contract value to service-disabled veteran businesses.

(D) The following standards shall be used by the division in determining whether an individual, business, or organization is eligible to be listed as a Service-Disabled Veteran Business Enterprise (SDVE):

1. Doing business as a Missouri firm, corporation, or individual or maintaining a Missouri office or place of business, not including an office of a registered agent;
2. Having not less than fifty-one percent (51%) of the business owned by one (1) or more service-disabled veterans (SDVs) or, in the case of any publicly-owned business, not less than fifty-one percent (51%) of the stock of which is owned by one (1) or more SDVs;
3. Having the management and daily business operations controlled by one (1) or more SDVs;
4. Having a copy of the SDV's Certificate of Release or Discharge from Active Duty (DD Form 214), and a disability rating letter issued by the Department of Veterans Affairs establishing a service connected disability rating, or a Department of Defense determination of service connected disability, unless the SDVE is listed with the division on

its website as previously certified in which case said documentation is not required;

5. The SDV(s) shall possess the power to make day-to-day as well as major decisions on matters of management, policy, and operation;

6. All SDVE listings and renewals shall be effective for a period not to exceed three (3) years, unless otherwise found inapplicable; and

7. If it has been determined that the SDVE at any time no longer meets the requirements stated above, it shall be removed from the listing.

(E) If the bidder/offeror meets the requirement of an SDVE, the bidder/offeror shall receive the Missouri service-disabled veteran business preference of a three- (3-) point bonus on bids/proposals for the performance of any job or service, except for a no cost contract and any other exception provided for in this regulation as approved by the director.

(F) The three percent (3%) goal can be met, and the bonus points obtained, by a qualified SDVE vendor and/or through the use of qualified subcontractors or suppliers that provide at least three percent (3%) of the total contract value.

(G) An SDVE must provide a commercially useful function that offers added value to a contract.

1. An SDVE performs a commercially useful function when it is responsible for executing a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, managing, or supervising the work involved. To perform a commercially useful function, the SDVE must also be responsible, when applicable, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. Supplies shall be provided exclusive to the performance of a contract, and an SDVE's obligation outside of a state contract shall not be considered an added value. Services or supplies to be provided by an SDVE that are outside the usual and customary business of the SDVE may be considered not to offer added value.

2. To determine whether an SDVE is performing a commercially useful function, the division may evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the firm's credit claimed for its performance of the work, and other relevant factors.

3. A firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction,



contract, or project through which funds are passed in order to obtain the appearance of SDVE participation. In determining whether a firm is such an extra participant, the division may examine similar transactions, particularly those in which SDVEs do not participate.

4. If an SDVE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the SDVE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the director will presume that it is not performing a commercially useful function.

5. When an SDVE is presumed not to be performing a commercially useful function as provided in subsection (11)(G) of this rule, the SDVE may present evidence to rebut this presumption. The director may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(H) If a bidder/offeror is proposing SDVE vendor participation, it must provide to the division all documents required by the solicitation including:

1. Complete information as required by the solicitation document including a list of each proposed SDVE vendor, the committed percentage of participation for each SDVE with the corresponding dollar amount of the participation of each SDVE, and the commercially useful supplies to be provided by each listed SDVE. If the bidder/offeror is a listed SDVE vendor, then the bidder/offeror must also list itself;

2. A copy of the SDVE's certification as a SDVE unless the SDVE is listed with the division on its website as previously certified in which case said documentation is not required; and

3. Written documentation as required in the solicitation from each listed SDVE that it is willing to participate in the contract in the kind and amount of work provided in the bidder/offeror's response.

(I) If the bid/proposal is awarded, the percentage level of the SDVE participation committed to by the bidder/offeror in required documentation shall be a binding contractual requirement.

(J) If the solicitation will not include subjective criteria, the division will convert the pricing to a point comparison as outlined in the solicitation and add the bonus points to the cost points calculated. If the solicitation will include subjective criteria, the division must include the SDVE requirements in the solicitation document, except when a solicita-

tion is for a no cost contract. Any other exception must be approved at the discretion of the director.

(K) Once a contract is awarded, a contractor shall submit on or before the fifteenth of the month immediately following the reporting period, unless another timeframe is approved by the division, until full payment is made a report detailing all payments it made immediately following the reporting period to all SDVEs participating in the contract. The report shall be submitted to the division on a division form.

1. No dollar value of work performed under a contract with a firm after it has ceased to be certified can be counted toward the SDVE overall goal.

2. The participation of an SDVE subcontractor toward a contractor's final compliance with its SDVE obligations on a contract cannot be counted until the amount being counted has actually been paid to the SDVE.

(L) SDVE participation will be credited by the division only for the value of the work actually performed by the SDVE toward the individual contract percentage, including cost of supplies and materials obtained or leased by the SDVE. The total dollar value of the work awarded to the SDVE by the prime contractor is counted toward the contract goal. When counting SDVE participation, the division may consider the following:

1. A contractor's entire expenditure to be paid to an SDVE supplier or manufacturer for material or services furnished which becomes a permanent part of the contract work. For the purpose of this regulation, a manufacturer shall be defined as an individual or firm that produces goods from raw materials or substantially alters them before resale;

2. By counting the work an SDVE contractor commits to perform with its own labor as well as the work that it commits to perform with SDVE subcontractors and suppliers; and

3. When an SDVE performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the SDVE performs with its own forces shall count toward SDVE individual contract percentages.

(M) If a contractor is unable to satisfactorily meet its SDVE contractual commitment, or if there are other reasons the vendor needs to replace an SDVE, the contractor must replace the business per the terms of the contract. If the contractor cannot obtain a replacement per the terms of the contract, it may apply to the division for a participation waiver by providing documentation detailing all efforts made to secure a replacement and

a good cause statement establishing why the participation level cannot be obtained. If the contractor has met its burden of proof, the division may grant a waiver of the contractual obligation for good cause.

(N) If the contractor's payment to a committed SDVE is less than the amount committed, and no waiver of the contractual obligation for good cause has been obtained, the state may cancel the contract and/or suspend or debar the contractor from participating in future state procurements or withhold payment to the contractor in an equal amount to the value of the participating commitment less actual payments made by the contractor to the participating business. If the division determines that a contractor has become compliant with the commitment amount, any withheld funds shall be released.

(O) At the time of contract renewal, a contractor must verify it is meeting its participation level and required payment to all SDVEs, or the contractor must submit a statement of when such SDVE participation is scheduled to occur. If the contractor is not meeting said requirements, the contract renewal may not be processed unless and until said requirements are satisfactorily met, a cure plan is approved, the statement is accepted by the division, or a waiver for good cause is obtained from the division.

(12) The division director or designee shall evaluate each recommendation in conjunction with each agency designee. The division shall either accept or reject each recommendation or request additional clarification from each evaluation team.

(13) For solicitations using weighted criteria evaluations, the evaluation criteria and point assessment assigned to each criterion, as well as the award process, shall be stated in the solicitation documents. The point assessment assigned to each evaluation criteria shall not be changed after the final end date and time for submission of the initial bids/responses has passed. The division shall consult with the applicable agency to determine which criteria are most important. Points assigned to cost do not have to be fifty percent (50%) or more of the assigned points.

(14) Any clerical error, apparent on its face, may be corrected by the division before contract award. Upon discovery of an apparent clerical error, the division shall contact the bidder/offeror and request clarification of the intended bid/proposal. The correction shall be incorporated in the notice of award, if applicable. Examples of apparent clerical errors are misplacement of a decimal point and obvious



mistake in designation unit.

(15) Minor technicalities or irregularities in bid/proposals can be waived by the division if the waiver does not create a competitive advantage for any bidder/offeror. Such waiver is appropriate for a condition that does not conform with a mandatory requirement of the solicitation document, and therefore could otherwise be considered non-responsive, but is so minor in nature, or cannot otherwise be met by all bidders/offerors, that to determine non-responsiveness could be considered unreasonable and would not be to the state's advantage.

(16) The division has the right to request clarification of any portion of the bidder/offeror's response in order to verify the intent of the bidder/offeror.

(17) When evaluating a bid/proposal, the division has the right to consider relevant information and fact, whether gained from a bid/proposal response, from a bidder/offeror, from a bidder/offeror's references, or from any other source. Any information submitted with a bid/proposal response, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid/proposal and the award of a contract.

(18) Awards shall be made to the bidder/offeror whose bid/proposal complies with—

(A) All mandatory specifications and requirements of the bid/proposal;

(B) Is the lowest and best bid/proposal in accordance with the evaluation methodology outlined in the bid/proposal; and

(C) Complies with Chapter 34, RSMo, other applicable Missouri statutes, and all applicable Executive Orders.

(19) With regard to competitive negotiation procurements, the basic steps of the evaluation should generally include the following:

(A) Proposals are reviewed for non-responsiveness (non-compliance) with mandatory requirements in the solicitation document. In conjunction with the evaluation committee, if applicable, the division shall obtain any clarifications to a response necessary to make a determination of compliance or non-responsiveness. A proposal which contains non-responsiveness issues which could never be expected to be brought into compliance, even if given an opportunity for competitive negotiations, is considered unacceptable or non-responsive and eliminated from further consideration in the evaluation. Proposals with

non-responsiveness issues which could be corrected during competitive negotiations, if conducted, are considered potentially acceptable and remain in the evaluation process until a decision is made in regard to competitive negotiations. If competitive negotiations are not conducted, proposals with non-responsiveness issues are considered non-responsive and are eliminated from further consideration in the evaluation. If competitive negotiations are conducted, the non-responsiveness issues are identified as deficiencies in the best and final offer request;

(B) Unless shortlisting of proposals has been determined to be appropriate, when competitive negotiations are necessary regarding the Request for Proposal, the division shall request a written best and final offer (BAFO) from each potentially acceptable offeror. Although not required, the BAFO letter should identify all proposal deficiencies that may make the proposal unacceptable. The BAFO request letter should provide the offeror the opportunity to reconsider any other aspect of its proposal, including pricing. All offerors shall be given the same amount of time to respond to the BAFO request, but the issuance of a request letter does not necessarily have to be simultaneous;

(C) Request for Proposal revisions may be permitted for the purpose of obtaining best and final offers and making changes to the proposal that are in the best interest of the state;

(D) The division may issue more than one (1) round of negotiations via the BAFO process; and

(E) When conducting competitive negotiations, there shall be no disclosure of any information submitted by competing offerors.

(20) The division will encourage participation in the procurement process and fairness in consideration of bids/proposals submitted by Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs). Programs/procedures designed to accomplish these objectives may include: inclusion of M/WBE requirements in solicitation documents, close review of requirements for bonding, experience and insurance requirements, contract unbundling, targeted notice of procurement opportunities, utilization of minority and women personnel on evaluation committees, if available, etc.

(A) Percentage Requirements and Compliance. Executive Order 15-06 states that the State of Missouri's Annual Aspirational Program Goals for Minority- and Women- Business Enterprises (M/WBE) are both ten percent (10%) of all state annual procurement funds expended by executive branch agencies.

These goals are a benchmark by which M/WBE opportunities to participate in state procurement are monitored and evaluated. These ten percent (10%) goals do not authorize or require the division to set M/WBE individual contract percentages at the ten percent (10%) level, or any other particular level, or to take any special administrative steps if the percentages are above or below ten percent (10%).

1. The division may use individual contract percentages to help meet the State's Annual Aspirational Program Goals. The division may establish individual contract percentages, with support from the Office of Equal Opportunity (OEO). The division may set each contract percentage by reviewing the type of goods or services being procured, elements of work to be performed, time frame, and geographical location, history of M/WBE and non-M/WBE usage, and availability of ready, willing, and able M/WBEs certified by OEO. The percentages will be expressed in the bid document as a percentage of the total contract value. Individual contract percentages may be set higher than the State's Annual Aspirational Program Goals where availability of M/WBEs has been demonstrated to be higher. Likewise, individual contract percentages may be set lower in areas where availability of M/WBEs has been demonstrated to be lower.

2. Bidders/Offerors must, in order to be responsive, make sufficient good faith efforts to meet M/WBE contract percentages. The bidder/offeror can meet the individual contract percentages in either one (1) of two (2) ways. First, the bidder/offeror can meet the percentages through documenting commitments for participation by M/WBEs sufficient to meet the M/WBE contract percentages. Second, the bidder/offeror can document adequate good faith efforts pursuant to subsection (20)(I) by demonstrating the bidder/offeror took all necessary and reasonable steps to achieve the M/WBE contract percentages, but was unable to achieve it.

(B) M/WBE individual contract percentages can be met by a qualified M/WBE vendor and/or through the use of qualified M/WBE subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for M/WBE participation. The M/WBE vendor shall be certified by OEO on the opening date of a bid/proposal. If an M/WBE vendor's certification has expired or otherwise ended, but the vendor had submitted its renewal application or other supporting documents to OEO prior to the bid/proposal opening and certification is reinstated prior to contract award, then the M/WBE vendor shall be considered qualified.



(C) Supplies provided by M/WBE vendors must provide a commercially useful function that provides added value to a contract. Supplies shall be provided exclusive to the performance of a contract, and an M/WBE vendor's obligation outside of a state contract shall not be considered an added value to the contract.

1. An M/WBE performs a commercially useful function when it is responsible for executing a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the M/WBE must also be responsible, when applicable, with respect to supplies used on the contract, for negotiating price, determining quality and quantity, ordering the supplies, and installing (where applicable) and paying for the supplies.

2. To determine whether an M/WBE is performing a commercially useful function, the division may evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the firm's credit claimed for its performance of the work, and other relevant factors.

3. A firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of M/WBE participation. In determining whether a firm is such an extra participant, the division may examine similar transactions, particularly those in which M/WBEs do not participate.

4. If an M/WBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the M/WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the director will presume that it is not performing a commercially useful function.

5. When an M/WBE is presumed not to be performing a commercially useful function as provided in paragraph (20)(C)4. of this rule, the M/WBE may present evidence to rebut this presumption. The director may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(D) M/WBE Participation Computed. M/WBE participation will be credited by the division only for the value of the work actually performed by the M/WBE toward the division individual contract percentage, including cost of supplies and materials obtained or leased by the M/WBE. The total dollar value

of the work granted to the M/WBE by the prime contractor is counted toward the applicable goal of the entire contract. When counting M/WBE participation, the division may consider the following:

1. A contractor's entire expenditure to be paid to an M/WBE supplier or manufacturer for supplies furnished which becomes a permanent part of the contract work. For the purpose of this regulation, a manufacturer shall be defined as an individual or firm that produces goods from raw materials or substantially alters them before resale and is an OEO certified M/WBE;

2. By counting the work an M/WBE contractor commits to perform with its own labor as well as the work that it commits to perform with M/WBE subcontractors and suppliers; and

3. When an M/WBE performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the M/WBE performs with its own forces shall count toward M/WBE individual contract percentages.

(E) If a bidder/offeree is proposing M/WBE vendor participation it must provide to the division all documents required by the solicitation, which may include:

1. Bid/proposal forms outlining the name, address, and telephone number of each and the M/WBE commitment percentage with the corresponding dollar amount of the participation of each M/WBE;

2. Bid/proposal forms outlining M/WBE participation and a description of what services or supplies the vendor will supply;

3. M/WBE vendor certification number or copy of certification issued by OEO; and

4. Written documentation as required in the solicitation from each listed M/WBE that it is willing to participate in the contract in the kind and amount of work provided in the bidder/offeree's response.

(F) If the bidder/offeree's bid/proposal is awarded, the percentage level of the M/WBE vendor participation committed to by the bidder/offeree shall be a binding contractual requirement.

(G) A bidder/offeree that is certified as both an MBE and WBE can meet both MBE and WBE individual contract percentages as long as the bidder/offeree is performing at least the total of the target MBE and WBE percentage of the contract value.

(H) If the solicitation will not include subjective criteria, the division is not required to address M/WBE contract percentages in the solicitation. If the solicitation will include subjective criteria, the division must include the M/WBE individual contract percentages

in the solicitation document, except when a solicitation is for a no cost contract. Any other exception must be approved at the discretion of the director.

(I) Good Faith Waiver. A bidder/offeree is required to make a good faith effort to locate and contract with M/WBEs. If a bidder/offeree has made a good faith effort to secure the required M/WBE participation and has failed, the bidder/offeree may submit with its bid proposal the information requested on forms provided with the bid documents. The division will review the bidder/offeree's actions as set forth in the bidder/offeree's submittal documents and other factors deemed relevant by the division, to determine if a good faith effort has been made to meet the applicable contract percentages. If the bidder/offeree is judged not to have made a good faith effort, the bid shall be rejected.

1. Bidders/offerees who demonstrate that they have made a good faith effort to include M/WBE participation will not have their bids/proposals rejected regardless of the percent of M/WBE participation, provided the bids/proposals are otherwise acceptable.

2. In reaching a determination of good faith, the director may evaluate, but is not limited to, the following factors:

A. The efforts to develop and sustain a working relationship with M/WBEs, including attending pre-bid conferences and matchmaking meetings and events;

B. The bidder's/offeree's efforts and methods to provide M/WBEs with full sets of plans, specifications, or appropriate information in a timely manner to assist the M/WBE in responding to the bidder's/offeree's solicitation. This could include conducting market research to identify M/WBEs, and providing emails or written notices to relevant OEO-certified M/WBEs listed in OEO's directory, and which are located in the applicable area or surrounding areas as early in the acquisition process as practicable;

C. The bidder's/offeree's efforts to make initial contact with at least three (3) relevant OEO-certified M/WBEs, its follow-up with the contacted M/WBEs, and whether the bidder/offeree received a proposal from a certified M/WBE for the relevant categories of work;

D. The bidder's/offeree's efforts to assist interested M/WBEs in obtaining bonding, lines of credit, or insurance as required by the division, or the efforts made to assist in obtaining necessary equipment, supplies, materials, or related assistance or services;

E. The extent to which the bidder/offeree divides work into projects suitable for subcontracting to M/WBEs, including, where appropriate, breaking out contract work



items into economically feasible units, for example, smaller tasks or quantities to facilitate M/WBE participation, even when the bidder/offeror might otherwise prefer to perform the work with its own forces. Prime contractors are not, however, required to accept higher quotes from M/WBEs if the price difference is excessive or unreasonable, but the fact that there may be some additional costs involved in finding and using M/WBEs is not in itself sufficient reason for a bidder's/offeror's failure to meet the individual contract M/WBE percentages, as long as such costs are reasonable;

F. The bidder's/offeror's ability to provide sufficient evidence in the form of documentation that supports the information provided;

G. Actual past participation of M/WBEs achieved by the bidder/offeror with contracts established by the division;

H. The reasons provided by the bidder/offeror for the inability to reach the individual contract percentages, and the ability of other bidders/offerors to meet the percentages, if applicable;

I. An insufficient good faith effort is the rejection of an M/WBE because its quotation for the work was not the lowest received. However, as noted above, a bidder/offeror is not required to accept an excessive or unreasonable quote in order to satisfy contract percentages; and

J. When a non-M/WBE subcontractor is selected over an M/WBE subcontractor, the division may require the bidder/offeror to submit copies of each M/WBE and non-M/WBE subcontractor quote to review whether the M/WBE prices were substantially higher; and the division may contact the M/WBE subcontractor to inquire as to whether the firm was contacted by the prime bidder/offeror. *Pro forma* mailings to M/WBEs requesting bids are not alone sufficient to satisfy good faith efforts.

(J) Once a contract is awarded, a contractor shall submit on or before each fifteenth of the month, unless another timeframe is approved by the division, until full payment is made, a report detailing all payments it made immediately following the reporting period to all M/WBEs participating in the contract. The report shall be submitted to the division on a division form. The division may waive this reporting requirement at any time for good cause. The amounts submitted may be verified by the division, OEO, or the Contract Oversight Office.

1. No dollar value of work performed under a contract with a firm after it has ceased to be certified can be counted toward the M/WBE overall goal.

2. The participation of a M/WBE subcontractor toward a contractor's final compliance with its M/WBE obligations on a contract cannot be counted until the amount being counted has actually been paid to the M/WBE.

(K) The director shall maintain records identifying and assessing the contractor's progress in achieving and maintaining M/WBE contract percentages. These records should show—

1. The amount and nature of awards made by the contractor to M/WBE vendors/suppliers/manufacturers; and

2. Monthly reports from the contractor on its progress in meeting M/WBE percentages, unless a different interval for reporting has been approved.

(L) Termination or Substitution of an M/WBE. If an M/WBE is unable to satisfactorily perform its participation level, or if there are other reasons the contractor needs to replace an M/WBE, the contractor for good cause can obtain written approval from the division prior to replacing the entity.

1. Before a contractor transmits to the division its request to terminate and/or substitute an M/WBE, the contractor must give notice in writing to the M/WBE subcontractor, with a copy to OEO and the division, of its intent to request to terminate and/or substitute, and the reason for the request. The contractor must give the M/WBE five (5) business days to respond to the contractor's notice and advise the OEO and the division and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why OEO and the division should not approve the contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the contractor may reduce or waive the response period as approved by the division.

2. For purposes of this subsection, good cause for approval of a request for termination or substitution for an M/WBE includes, but is not limited to, the following:

A. The listed M/WBE subcontractor fails or refuses to execute a written contract;

B. The listed M/WBE fails or refused to perform the work of its subcontract in a way consistent with normal industry standards, provided, however, that good cause does not exist if the failure or refusal by the M/WBE subcontractor to perform its work on the subcontract resulted from the bad faith or discriminatory action of the prime contractor;

C. The listed M/WBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;

D. The listed M/WBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

E. The listed M/WBE subcontractor is ineligible to work on projects because of suspension or debarment proceedings;

F. The listed M/WBE subcontractor is not a responsible contractor as determined by the division;

G. The listed M/WBE subcontractor voluntarily withdraws from the project and provides the prime contractor written notice of its withdrawal, or the withdrawal is otherwise confirmed by the division;

H. The listed M/WBE subcontractor is ineligible to receive M/WBE credit for the type of work required;

I. The listed M/WBE subcontractor owner dies or becomes disabled with the result that a listed M/WBE prime contractor is unable to complete its work on the contract; and

J. Other documented good cause that the division determines compels the termination of an M/WBE subcontractor. But good cause does not exist if the prime contractor seeks to terminate an M/WBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the M/WBE subcontractor was engaged or so that the prime contractor can substitute another M/WBE or non-M/WBE after contract award without good cause.

3. If approved, the contractor must make good faith efforts to meet the contractual commitment to the contract goal. These good faith efforts shall be directed at finding another M/WBE to perform at least the same amount of work under the contract as the M/WBE that was terminated, to the extent needed to meet the contract goal. OEO and the division's approval shall not be arbitrarily withheld. If the contractor cannot obtain a replacement, it may apply to the division for a participation waiver by providing documentation detailing all good faith efforts made to secure a replacement and a good cause statement establishing why the participation level cannot be obtained. If the contractor has met its burden of proof, the division, after consulting with OEO, may grant an M/WBE waiver for good cause.

4. The good faith efforts shall be documented by the contractor. If the division requests documentation under this subsection, the contractor shall submit the documentation within seven (7) business days, which may be extended for an additional seven (7) business days, if necessary, at the request of the contractor.

5. The division shall provide a written determination to the contractor stating



whether or not good faith efforts have been demonstrated.

(M) If the contractor's participation level or payment to a participating M/WBE entity is less than the amount committed, and no M/WBE waiver for good cause has been obtained, the division may cancel the contract and/or suspend or debar the contractor from participating in future state procurements for a period of six (6) months or longer, up to permanent debarment, or withhold payment to the contractor in an equal amount to the value of the participating commitment less actual payments made by the contractor to the participating entity. If the division determines that a contractor has become compliant with the commitment amount, any withheld funds shall be released. Any suspension or debarment based on such noncompliance may be rescinded by the division at its discretion.

1. A contractor may appeal a suspension or debarment to the commissioner by filing a written appeal no later than twenty (20) calendar days from the date on the notice of suspension or debarment issued by the division. The suspension or debarment remains in effect pending the results of the appeal.

(N) At the time of contract renewal, a contractor must verify it is meeting its participation level and required payment to all M/WBE entities, or the contractor must submit a statement of when such M/WBE participation is scheduled to occur. If the contractor is not meeting said requirements, the contract renewal shall not be processed unless and until said requirements are satisfactorily met, a cure plan is approved, the statement is accepted by the division, or an M/WBE waiver for good cause is obtained from the division.

(21) For a delegation of authority by the division to a state agency, the delegation shall contain any restrictions on the agency's management of the solicitation, including those related to use of weighted criteria, M/WBE participation, and competitive negotiations.

AUTHORITY: section 34.050, RSMo 2000, and section 34.074, RSMo Supp. 2013. Original rule filed Oct. 15, 1992, effective June 7, 1993. Rescinded and readopted: Filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000, effective Oct. 30, 2000. Amended: Filed June 1, 2011, effective Nov. 30, 2011. Amended: Filed April 5, 2016, effective Nov. 30, 2016.*

**Original authority: 34.050, RSMo 1939, amended 1945, 1993, 1995 and 34.074, RSMo 2008, amended 2010.*

1 CSR 40-1.060 Vendor Registration, Notification of Bidding Opportunities, Suspension, and Debarment

PURPOSE: This rule describes procedures for vendor registration, vendor notification of bidding opportunities and procedures for suspension and debarment of vendors.

(1) Any individual, business or organization may complete a vendor registration in order to be added to the official vendor data base. It is the vendor's sole responsibility to update their vendor registration information.

(2) A person, business, or corporation contracting with the state shall be considered as an independent contractor and shall not be considered nor represent him/herself as an employee or agency of the state. A corporation must be authorized to do business in Missouri by registering with the Office of the Secretary of State before proceeding with work under a contract unless specifically exempt pursuant to section 351.572, RSMo.

(3) The division may institute an annual fee to allow registered vendors the ability to receive automatic email notification of bidding opportunities for their selected commodity/service codes through the online registration system and the ability to submit electronic bids.

(4) Email notification and online bidding capabilities will be limited to those vendors that have properly registered and paid the annual fee, if required.

(5) The division may include contract clauses requiring the awarded contractor to issue a payment to the state or the state's designee for a stated percentage as outlined in the contract.

(6) The director, or designee, may suspend a vendor for cause. The vendor shall be mailed a formal notice of suspension outlining the reasons for, the specific conditions of, and the effective period of the suspension. Upon completion of the suspension period it shall be the responsibility of the vendor to request reinstatement if desired. A request for reinstatement should be made in writing.

(A) Any bids/proposals submitted by the suspended vendor shall not be considered.

(B) The suspension of a vendor may be for a period of up to one hundred eighty (180) days for a first violation and for not more than a year for subsequent violation(s).

(C) The vendor may appeal suspension by submitting a written request to the director or

commissioner within fourteen (14) calendar days after receipt of the formal notice. The vendor must provide specific evidence and reasons why suspension is not necessary. On the basis of this information, the suspension may be modified, rescinded, or affirmed. The decision shall be final and mailed to all parties.

(7) The director may debar a vendor whenever, in the director's sole discretion, it is in the best interest of the state to do so. A vendor may be debarred for a single incident of serious misconduct or after multiple less serious incidents. The director shall notify the vendor of the reason for debarment and any action the vendor must take in order to be found eligible to contract again.

(A) Any bids/proposals submitted by the debarred vendor shall not be considered.

(B) The vendor may appeal the debarment by requesting that the determination be reviewed by the commissioner of administration or the commissioner's designee. Any request for review must be in writing and filed with the commissioner within fourteen (14) calendar days after the date of receipt of the notice of debarment. The request must set forth specific evidence and reasons why debarment should be reversed. The commissioner's determination shall be final and shall be mailed to all parties involved.

(8) The following shall be sufficient cause for suspension or debarment. The list is not meant to be all inclusive but shall serve as a guideline for vendor discipline and business ethics—

(A) Failure to perform in accordance with the terms and conditions and requirements of a contract/purchase order;

(B) Violating any federal, state, or local law, ordinance, or regulation in the performance of a contract/purchase order;

(C) Providing false or misleading information on an application, in a bid/proposal, or in correspondence to the division or a state agency;

(D) Failing to honor a bid/proposal for the length of time specified;

(E) Colluding with others to restrain competition;

(F) Obtaining information, by whatever means, related to a proposal submitted by a competitor in response to a Request for Proposal in order to obtain an unfair advantage during the negotiation process;

(G) Contacting proposal/bid evaluators or any other person who may have influence over the award, without authorization from the division, for the purpose of influencing the award of a contract; or



(H) Giving gifts, meals, trips, or any other thing of value or a monetary advantage for personal benefit, directly or indirectly, to an employee of the division or to any evaluator of bids/proposals.

AUTHORITY: section 34.050, RSMo 2000. Original rule filed Oct. 15, 1992, effective June 7, 1993. Rescinded and readopted: Filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000, effective Oct. 30, 2000. Amended: Filed June 14, 2005, effective Dec. 30, 2005. Amended: Filed June 1, 2011, effective Nov. 30, 2011.*

**Original authority: 34.050, RSMo 1939, amended 1945, 1993, 1995.*

1 CSR 40-1.070 Minority/Women Business Enterprise Participation in Procurement Process

(Moved to 1 CSR 10-17.050)

1 CSR 40-1.080 Minority/Women Business Enterprise Certification

(Moved to 1 CSR 10-17.040)

1 CSR 40-1.090 Waiver of Procedures Contained in Chapter 34, RSMo, Related to Cost and Pricing

PURPOSE: This rule waives the procedures in Chapter 34, RSMo, related to cost and pricing for the purchase of services for patients, residents, and clients.

(1) The commissioner of administration has determined that the Department of Mental Health's services for its patients, residents and clients can best be purchased by the department with funds appropriated for that purpose and waives procedures of Chapter 34, RSMo, related to cost and pricing, so that the department may evaluate competitive proposals on the basis of quality and other variables exclusive of price.

AUTHORITY: section 630.405.5, RSMo Supp. 2001. Original rule filed Nov. 26, 2002, effective May 30, 2003.*

**Original authority: 630.405, RSMo 1980, amended 1993, 1995, 2001.*