



**Rules of
Office of Administration**

**Division 30—Division of Facilities Management,
Design and Construction**

**Chapter 5—Minority/Women Business
Enterprises**

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Title 1—OFFICE OF ADMINISTRATION

Division 30—Division of Facilities Management, Design and Construction Chapter 5—Minority/Women Business Enterprises

1 CSR 30-5.010 Minority/Women Business Enterprise and Service Disabled Veteran Business Enterprise Participation in State Construction Contracts

PURPOSE: This regulation establishes a uniform program by which Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) that have been certified or approved by the Office of Workforce Diversity (OSWD) as such may participate in construction contracts let by the Office of Administration, state of Missouri. This regulation provides that the state of Missouri, except to the extent that the commissioner of the Office of Administration determines otherwise, shall require that for contracts bid and awarded in an amount greater than or equal to one hundred thousand dollars (\$100,000), the successful bidder shall have as an overall goal subcontracting not less than ten percent (10%) of the awarded contract price for work to be performed by MBEs, and shall have as an overall goal subcontracting not less than five percent (5%) of the awarded contract price for work to be performed by WBEs. Individual project goals may be set to higher than the overall goals where availability of MBE/WBEs has been demonstrated to be higher such as the St. Louis and Kansas City metropolitan areas. Individual project goals may be set lower than the overall goals in areas where availability of MBE/WBEs has been demonstrated to be lower, such as rural communities.

(1) Definitions.

(A) “Bidder” means one who submits a response to a solicitation by the Office of Administration for construction services.

(B) “Bid” means a bid proposal submitted to the Division of Facilities Management, Design and Construction by a bidder.

(C) “Compliance” means the condition existing when a bidder or contractor has met the requirements of these regulations.

(D) “Contract” means a mutually binding legal relationship or any modifications obligating the contractor to furnish construction supplies or services.

(E) “Contractor” means one who participates, through a contract, in any program covered by these regulations.

(F) “Commissioner” means the commissioner of the Office of Administration.

(G) “Director” means the director of the Division of Facilities Management, Design and Construction.

(H) “Joint venture” means an association of two (2) or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

(I) “MBE” means Minority Business Enterprise.

(J) “Minority.” The definition in 1 CSR 10-17.010(1)(G) will be applied.

(K) “Minority Business Enterprise.” The definition in section 37.020.1(3), RSMo, will be applied.

(L) “OA” means the Office of Administration.

(M) “Kansas City metropolitan area” means the City of Kansas City and the Missouri counties of Jackson, Cass, and Clay.

(N) “Service-disabled veteran” means any individual who is disabled as certified by appropriate federal agency responsible for the administration of veterans’ affairs.

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

(P) “St. Louis metropolitan area” means the City of St. Louis and the Missouri counties of St. Charles and St. Louis.

(Q) “WBE” means Women Business Enterprise.

(R) “Women Business Enterprise” means a business concern which is at least fifty-one percent (51%) owned by one (1) or more women or in the case of any publicly-owned business at least fifty-one percent (51%) of the stock of which is owned by one (1) or more women and whose management and daily business operations are controlled by one (1) or more women.

(S) “OEO” means the Office of Equal Opportunity.

(T) “FMDC” means Division of Facilities Management, Design and Construction.

(2) Contract Amount. This regulation applies to any Office of Administration, state of Missouri construction contract awarded to a successful bidder in a bid amount equal to or greater than one hundred thousand dollars (\$100,000).

(3) Discrimination Prohibited. No person shall be excluded from participation in, or denied the benefits of, or otherwise be discriminated against in connection with the award and performance of any contract covered by this regulation, on the grounds of race, color, sex, or national origin.

(4) Commissioner, Duties, and Responsibilities.

(A) The commissioner shall, through the Office of Equal Opportunity (OEO) for MBE/WBEs and through the Division of Facilities Management, Design and Construction (FMDC) for SDVEs—

1. Compile, maintain, and make available a directory of MBE/WBE and SDVE vendors along with their capabilities relevant to construction contracting requirements in general and to particular solicitations. OEO or FMDC shall make the directory available, upon request, to all bidders and contractors. The directory shall specify the name of the MBE/WBE or SDVE, the type of business it conducts, and its address, phone number, and contact person;

2. To the extent deemed appropriate, include all MBE/WBEs and SDVEs on open solicitation mailing lists;

3. Annually report in writing to the commissioner concerning the awarding of contracts to MBE/WBEs or SDVEs; and

4. Certify the eligibility of MBE/WBEs and joint ventures involving MBE/WBEs and maintain listings of SDVEs.

(5) Percentage Goals and Compliance.

(A) For contracts bid and awarded in an amount greater than or equal to one hundred thousand dollars (\$100,000), the successful bidder shall have as overall goals subcontracting not less than ten percent (10%) of the awarded contract price for work to be performed by MBEs, shall have as overall goals subcontracting not less than five percent (5%) of the awarded contract price for work to be performed by WBEs, and shall have as overall goals of subcontracting not less than three percent (3%) of the work to be performed by SDVEs. Individual project goals may be set to higher than the overall goals where availability of MBE/WBEs has been demonstrated to be higher, such as the St. Louis and Kansas City metropolitan areas. Individual project goals may be set lower than the overall goals in areas where availability of MBE/WBEs has been demonstrated to be lower, such as rural communities.

(B) If after the contract has been awarded to the contractor, the contractor fails to meet or maintain the contracted participation amount(s), the contractor must satisfactorily explain to the director why the participation amount(s) cannot be achieved and why meeting the participation amount(s) was beyond the contractor’s control.

1. It is the responsibility of the contractor to submit documentation that supports the utilization of MBE/WBE subcontractors to



OEO and the utilization of SDVE subcontractors to FMDC on a regular basis, with the understanding that the amounts submitted might be verified by OEO or FMDC staff. If upon verification it is found that the amounts disagree, then the contractor must satisfactorily explain to the directors of FMDC or OEO the reason for the discrepancies.

(C) If the directors find the contractor's explanation unsatisfactory, the directors may take any appropriate action, including, but not limited to:

1. Declaring the contractor ineligible to participate in any state contracts administered through the Office of Administration for a period not to exceed six (6) months; and

2. Declaring the contractor in breach of contract.

(6) Waiver.

(A) A bidder is required to make a good faith effort to locate and contract with MBE/WBEs and SDVEs. If a bidder has made a good faith effort to secure the required MBE/WBEs and SDVEs and has failed, the bidder may submit with their bid proposal the information requested on forms provided with the bid documents. The director will review the bidder's actions as set forth in the bidder's submittal documents and other factors deemed relevant by the director, to determine if a good faith effort has been made to meet the applicable percentage goal. If the bidder is judged not to have made a good faith effort, the bid shall be rejected.

(B) Bidders who demonstrate that they have made a good faith effort to include MBE/WBE and SDVE participation will be awarded the contract regardless of the percent of MBE/WBE and SDVE participation, provided the bid is otherwise acceptable.

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

1. The bidder's efforts to develop and sustain a working relationship with MBE/WBEs and SDVEs;

2. The bidder's efforts and methods to provide MBE/WBEs and SDVEs with full sets of plans and specifications or appropriate sections thereof sufficient to prepare a proposal to the bidder;

3. The bidder's efforts and methods to find and inform multiple local MBE/WBEs and SDVEs about the proposed work in a timely manner and define for them the specific scope of work for which a proposal is requested;

4. The bidder's efforts to make initial contact with at least three (3) MBE/WBEs and SDVEs for each category of work to be performed, follow up with those contacted,

and receive a proposal for those categories of work;

5. Reasons for rejecting MBE/WBEs and SDVEs proposal;

6. The extent to which the bidder divided work into projects suitable for subcontracting to MBE/WBEs and SDVEs;

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

8. Actual participation of MBE/WBEs and SDVEs achieved by the bidder.

(7) Bidder's Duties and Responsibilities.

(A) The bidder shall submit with their bid proposal the information requested on the form provided for every MBE/WBE and SDVE the bidder intends to use on the contract work.

(B) If the MBE/WBE and SDVE is a joint venture, and one (1) or more parties of the joint venture is not certified or listed as a MBE/WBE and SDVE, the bidder shall submit with their bid proposal the information requested on the form provided.

(C) The bidder shall use MBE/WBEs certified or approved by OEO or listed SDVEs. Certified MBE/WBE vendors can be found at the OEO website and listed SDVE vendors can be found on the websites for the Division of Purchasing and Materials Management and FMDC.

(D) For construction projects bid by FMDC, MBE/WBEs certified by other municipalities, counties, and state and federal agencies that meet the basic requirements of the OA/OEO certification program may be used and counted toward achieving the goals, provided that the names and certifications of these MBE/WBEs are referred to OEO for subsequent follow-up and certification by OEO.

(E) If an MBE/WBE or SDVE is replaced during the course of the contract, the contractor shall make a good faith effort to replace it with another certified MBE/WBE or SDVE. All substitutions shall be approved by the director.

(F) Successful bidders shall provide the director monthly reports on the bidder's progress in meeting its MBE/WBE and SDVE obligations.

(8) Counting MBE/WBE and SDVE Participation Toward Meeting MBE/WBE and SDVE Goals.

(A) The total dollar value of the work granted to the MBE/WBE and SDVE by the successful bidder is counted towards the applicable goal of the entire contract.

(B) A bidder may count towards their MBE/WBE and SDVE goals that portion of the total dollar value granted to a certified joint venture equal to the percentage of the ownership and control of the MBE/WBE and SDVE partner in the joint venture.

(C) A bidder may count toward their MBE/WBE and SDVE goals only expenditures to certified MBE/WBE and listed SDVE vendors that perform a commercially useful function in the work of a contract.

1. An MBE/WBE and SDVE vendor is considered to perform a commercially useful function when it is responsible for executing a distinct element of the work contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an MBE/WBE or SDVE vendor is performing a commercially useful function, the director shall evaluate the amount of work subcontracted by the MBE/WBE and SDVE, industry practices, and any other relevant factors.

2. An MBE/WBE and SDVE vendor may subcontract a portion of the work. If an MBE/WBE and SDVE subcontracts a greater portion of the work than would be expected on the basis of normal industry practices, the MBE/WBE and SDVE shall be presumed not to be performing a commercially useful function. The MBE/WBE and SDVE vendor may present evidence to rebut this presumption to the bidder. The bidder's decision on the rebuttal of this presumption is subject to review by the director.

(D) A bidder may count toward their MBE/WBE and SDVE goals only that portion of work performed at the lowest subcontract level such that the percentage of work performed by MBE/WBEs and SDVEs cannot exceed one hundred percent (100%).

(E) A bidder may count toward its MBE/WBE and SDVE goals expenditures for materials and supplies obtained from certified MBE/WBE and listed SDVE suppliers and manufacturers provided that the MBE/WBE and SDVE vendor assumes the actual and contractual responsibility for the provision of the materials and supplies.

1. The bidder may count its entire expenditure to an MBE/WBE or SDVE manufacturer. For the purposes 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 certified MBE/WBE approved through the state of Missouri certification program administered by OEO or listed as an SDVE with the Division of Purchasing and Materials Management or FMDC.



2. The bidder may count its entire expenditures to MBE/WBE or SDVE suppliers provided that the MBE/WBE or SDVE supplier performs a commercially useful function, as defined in paragraph (8)(C)1. of this rule, in the supply process.

(9) Maintenance of Records and Reports. The director shall maintain records identifying and assessing the contractor's progress in achieving and maintaining MBE/WBE and SDVE percentage goals. These records shall show—

(A) Procedures which have been adopted by the contractor to comply with the requirements of these regulations;

(B) The amount and nature of awards made by the contractor to MBE/WBE and SDVE vendors/suppliers/manufacturers; and

(C) Monthly reports from the contractor on its progress in meeting MBE/WBE and SDVE goals.

(10) Certification of MBE/WBE Vendors.

(A) OEO, which was created under Executive Orders 05-30 and 10-24, is responsible for the certification of MBE/WBE vendors for the state of Missouri by following state regulation 1 CSR 10-17.040.

(11) Nothing in this regulation shall limit or affect the commissioner's functions and rights to determine the qualification, responsibilities, and reliability of any individual, firm, or other entity to participate in state contracts.

AUTHORITY: section 8.320, RSMo 2000. Original rule filed March 9, 1984, effective Aug. 11, 1984. Emergency amendment filed Dec. 10, 1985, effective Dec. 20, 1985, expired April 19, 1986. Amended: Filed Dec. 10, 1985, effective April 11, 1986. Amended: Filed Oct. 27, 2005, effective April 30, 2006. Rescinded and readopted: Filed Nov. 5, 2007, effective June 30, 2008. Amended: Filed June 1, 2011, effective Nov. 30, 2011.*

**Original authority: 8.320, RSMo 1958, amended 1965.*