



Rules of
Office of Administration
Division 10—Commissioner of Administration
Chapter 17—Office of Equal Opportunity

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**Title 1—OFFICE OF
ADMINISTRATION**

**Division 10—Commissioner of
Administration**

Chapter 17—Office of Equal Opportunity

1 CSR 10-17.010 Definitions

PURPOSE: This rule defines terms related to the state of Missouri's Minority and Women's Business Enterprise Program, established by the Office of Administration and administered by the Office of Equal Opportunity.

(1) For purposes of the state of Missouri's Minority and Women's Business Enterprise Program, established by the Office of Administration and administered by the Office of Equal Opportunity, the following definitions apply:

(A) Certification or certified—A determination made after an applicant has met the eligibility requirements to be qualified as a Minority Business Enterprise (MBE) or a Women's Business Enterprise (WBE) by the Office of Administration, Office of Equal Opportunity (OEO);

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

(C) Contract—A legally-binding relationship obligating a contractor, subcontractor, or supplier to furnish goods or services and the buyer to pay for them. For the purposes of these regulations, leases, and subcontracts may be considered contracts;

(D) Contractor—A person or entity that has a contract directly with the state of Missouri;

(E) Firm—A person or for profit business lawfully existing under the laws of the state of Missouri or its state of origin including, but not limited to, a sole proprietorship, corporation, partnership, limited partnership, joint venture, limited liability company (LLC), or professional corporation;

(F) Minority—Any individual who is a citizen or lawfully-admitted permanent resident of the United States and who is a member of any of the following groups:

1. Black Americans—Includes persons having origins in any of the black racial groups of Africa;

2. Hispanic Americans—Includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

3. Native Americans—Includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

4. Asian-Pacific Americans—Includes persons whose origins are from Japan, China,

Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Singapore, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

5. Subcontinent Asian Americans—Includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka; or

6. Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective;

(G) Minority Business Enterprise (MBE)—The definition in section 37.020.1(3), RSMo, will be applied;

(H) OA—The state of Missouri's Office of Administration;

(I) OEO—Office of Equal Opportunity;

(J) Principal place of business—The primary headquarters of the firm where the individuals who manage the day-to-day operations and make executive decisions for the firm are located and where its records are kept;

(K) Rapid response applicant—Any applicant who possesses a current M/WBE certification or equivalent from another qualified certifying entity as determined by OEO. Rapid response applicants may receive certification from OEO through a memorandum of understanding. Less documentation is needed than for a standard/initial applicant, and an on-site review is required from the other qualified certifying entity. Certification by another certifying entity does not guarantee certification by OEO;

(L) Subcontractor—A firm that does not have a contract directly with the state of Missouri but instead contracts a portion of the work of a state contract from the contractor or another subcontractor;

(M) Standard/initial applicant—Any applicant whose principal place of business is in Missouri and who does not currently possess a current M/WBE certification or equivalent from another qualified certifying entity as determined by OEO. OEO may perform an on-site review at the applicant's place of business and must review the application and all supporting documentation before certification is granted; and

(N) 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 37.020, RSMo Supp. 2014. Original rule 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 37.020, RSMo 1990, amended 2014.*

1 CSR 10-17.040 Minority/Women's Business Enterprise Certification

PURPOSE: This rule establishes a program by which Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) may be certified by the Office of Equal Opportunity (OEO).

(1) Any firm desiring to obtain certification as a Minority Business Enterprise (MBE) or Women's Business Enterprise (WBE) shall submit an application and required documentation to the Office of Equal Opportunity (OEO), and be registered and in good standing with the Missouri Secretary of State, if applicable. There are two (2) methods to obtain certification—initial/standard and rapid response.

(2) An applicant is required to submit to OEO documentation related to the legal structure, ownership, and control of the firm that is necessary to determine eligibility for certification. Such documentation may include, but is not limited to: Articles of Incorporation/Organization, shareholder meeting minutes, bylaws or operating agreements, board meeting minutes, partnership agreements, stock ledgers and certificates, tax returns, lease and loan agreements, bank account signature cards, and joint venture agreements.

(A) The application must be signed by all of the applicant firm's minority or women owners who are in control of the firm. The application must include a statement attesting to the accuracy, completeness, and truthfulness of the information on and accompanying the application form.

(B) Each application received shall be reviewed by OEO for completeness, and the applicant firm will be notified in writing by OEO of any additional information required. The additional information requested must be received within a maximum of thirty (30) days from the date on the notice for additional information or as otherwise specified in writing by OEO. After that period, if the additional information required has not been received by OEO and no extension of time has been requested and granted in writing, OEO may deny the application for the firm's failure or refusal to provide the relevant information



requested by OEO.

(C) After all required information is received, an on-site visit to the office(s) of the applicant firm whose principal place of business is located in Missouri and possible visits to job sites at which the firm is working in Missouri, may be scheduled by OEO. OEO will not make an on-site visit to a firm whose principal place of business is outside of Missouri, but will contact the firm's home state (or another certifying entity) for a copy of its on-site visit.

(3) An applicant seeking certification has the burden of demonstrating to OEO, by a preponderance of the evidence, that it meets the requirements of section 37.020, RSMo, and these regulations.

(4) Initial/standard certification and a rapid response certification are effective for three (3) years from the date of issuance. Joint venture certifications are effective for either two (2) years or the term of the joint venture, whichever occurs first.

(5) Rapid Response Certifications. An applicant who possesses a current M/WBE certification or equivalent from another qualified certifying entity as determined by OEO may apply for certification through OEO's rapid response application process. The on-site review report from the primary certifying entity must be received by OEO. OEO shall provide a list of qualified certifying entities. Certification by another certifying entity does not guarantee certification by OEO regardless of the other certifying entity which may have previously or currently certified a firm as a M/WBE, OEO will make an independent determination of whether the applicant firm will be certified.

(6) If an applicant is approved for certification, a notice of approval and a certificate will be sent to the Minority and/or Women's Business Enterprise (M/WBE) by OEO. Such certification may identify the specific category or categories of work or industry code(s) in which the firm is certified. The firm and its pertinent information, including any approved specific categories of work shall be added to OEO's directory.

(7) A firm certified by OEO must notify OEO in writing of any changes that may affect its eligibility for continued certification under section 37.020, RSMo, and these regulations within thirty (30) days of the effective date of such change. The notice must provide supporting documentation describing in detail the nature of such change(s).

(8) An applicant denied certification or whose certification is revoked will be notified in writing of the reasons for denial or revocation. Reasons may include, but are not limited to: incomplete or inaccurate application, failure to provide requested information, failure to meet certification standards, or failure to cooperate during the certification process. If OEO denies or revokes a certification, an applicant may appeal to the commissioner. The appeal shall be in writing and addressed to the commissioner. The appeal shall be received by the commissioner no later than twenty-one (21) calendar days from the date of the denial or revocation notification. Appeals received by the commissioner after twenty-one (21) calendar days will not be considered. The appeal shall clearly state why the denial or revocation is alleged to be in error. Information that was requested but not provided before the denial or revocation will not be considered in an appeal. The commissioner's decision shall be final. Applicants denied certification or revocation are ineligible to reapply for one (1) year from the date of the denial or revocation notification.

(9) A third party who has reason to believe that an applicant has been wrongly denied or granted certification as an M/WBE or joint venture may file a third-party challenge with OEO. A challenge by a third party is not considered an appeal.

(A) The third-party challenge must be submitted in writing with supporting documentation in sufficient detail to support the allegations. OEO may require additional documentation from the challenger.

(B) The third-party challenge must contain the name, address, telephone number, and signature of the challenger.

(C) Third-party challenges will not be considered confidential.

(D) OEO will review the complaint and related material concerning the firm in question, including available material from other sources within or outside OEO. OEO may conduct an investigation, including requests for information or documentation and unannounced site visits. However, OEO is not obligated to conduct any investigation beyond a document review. At an appropriate time in the complaint investigative phase, OEO will notify the certified firm in writing that a complaint alleging the firm's ineligibility has been filed. OEO may request additional information from the firm relating to the allegations.

(E) After OEO has reviewed the complaint and conducted any investigation deemed necessary, OEO shall make a determination whether there is reasonable cause to believe

that the firm in question is ineligible to be certified.

(F) If OEO finds reasonable cause to believe that the firm is ineligible, OEO will provide written notice to the firm that OEO proposes to find the firm ineligible, setting forth the reasons for the proposed determination and supporting documentation. If OEO determines that such reasonable cause does not exist, it will notify the complainant and the firm in writing of this determination and the reasons for it.

(G) If OEO notifies a firm of its ineligibility, the firm may appeal the decision to the commissioner pursuant to the requirements of section (9) of this regulation.

(H) OEO may decline rather than deny certification when one (1) or more questions are identified during the preview for certification. Applicants declined certification will be notified in writing and may respond with additional documentation or clarification within the time frame stated in the notice.

(I) Firms shall cooperate fully with OEO's request for information relevant to the certification process. Failure or refusal to provide such information is grounds for a denial or revocation of certification.

(10) OEO will be guided by the following standards when evaluating applicants for certification:

(A) In determining whether an applicant meets the requirements of section 37.020, RSMo, and these regulations, OEO will consider all information in its possession;

(B) OEO will evaluate an applicant based on current circumstances and will not deny certification solely because an applicant was not owned or controlled by a minority or woman at some time in the past;

(C) OEO may authorize a one- (1-) year provisional certification in certain circumstances, such as to allow time for a minority or woman to transition from being an employee to a business owner, to allow entities who have not been in business for at least a year to be certified, or to review tax information that is not available for a new firm at the time of application;

(D) An applicant will not be denied certification solely because it is a newly-formed firm; has not completed projects or contracts at the time of its application; has not yet realized profits from its activities; or has not demonstrated a potential for success; and

(E) Per OEO's discretion, it shall grant certification to a firm, and such certification may identify the specific category or categories of work or industry code in which the firm is certified. To become certified in an additional type of work after initial certification, OEO



may require the firm to demonstrate that it meets the criteria for certification to perform that type of work. OEO shall not require that the firm be recertified or submit a new application for certification, but OEO may verify the minority or woman owner's control of the firm in the additional category of work.

1. OEO shall use categories or codes that describe, as specifically as possible, the principal goods or services which the firm provides to its customers. Multiple categories or codes may be assigned where appropriate.

2. OEO and the certified firm shall ensure that the categories or codes listed in a certification are kept up-to-date and accurate. The firm bears the burden of providing detailed company information to OEO to make an appropriate designation.

3. If a firm and OEO agree that there is not a category or code that fully or clearly describes the type(s) of work in which the firm is seeking to be certified, the firm may request that OEO, in its certification documentation, supplement the assigned category or code with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. OEO may grant such request, if appropriate. A vague, general, or confusing description is not sufficient.

4. OEO is not precluded from changing at any time a certification classification or description if there is a factual basis supported by documentation pursuant to the process identified in section (14) of this regulation.

(11) Each year following the original date of certification, OEO will notify each firm certified under this program. Each firm must accurately, truthfully, and fully provide the requested information and supporting documentation to OEO. The annual update information and supporting documentation must be verified by all of the applicant firm's minority or women owners who are in control of the firm. The verification shall be in the form of a statement attesting to the accuracy, completeness, and truthfulness of the information and supporting documentation. OEO may revoke the certification of a firm that fails to complete and return the form. If changes have taken place, the M/WBE must provide information and/or documentation to substantiate that it continues to meet the requirements of these regulations as required by section (7) of this regulation.

(12) OEO will notify a certified firm approximately sixty (60) days before the expiration date of the certification. However, regardless of whether the firm receives the recertification notification, it is the firm's responsibility to timely submit the required information

and supporting documentation. If the recertification update materials and supporting documentation are received by OEO on or before the certification expiration date, then the firm's certification will not lapse on the third anniversary date after certification. While a timely recertification application is pending, the prior certification shall continue until OEO rules on the recertification request. If recertification information and supporting documentation are not timely received by OEO on or before the anniversary date of certification, then that firm's certification shall lapse, and the firm shall no longer be certified as an M/WBE, and will be removed from the active list of certified M/WBE vendors. Should a firm whose certification has lapsed later apply for M/WBE certification with OEO, that firm shall remain without M/WBE certification unless and until its new M/WBE certification is approved by OEO. Recertification will be determined by information submitted on the renewal update, tax returns, and any documented changes regarding ownership, management, or control. Recertification is not guaranteed. Rapid response recertification is subject to continued certification by another qualified certifying entity as determined by OEO.

(13) Revocation of Certification.

(A) If, based on notification by the firm of a change in its circumstances or other information that comes to OEO's attention, a determination is made that there is reasonable cause to believe that the currently certified firm is ineligible for certification in whole or per certain categories or codes, OEO shall provide written notice to the firm that OEO proposes to find the firm ineligible. The notice shall set forth the reasons for the proposed determination and state the date by which the firm must provide a written response to the proposed determination if it desires to challenge OEO's determination. Reasons for ineligibility may include, but are not limited to, a change in the firm's circumstance effecting eligibility such as information not available to OEO at the time the firm was certified or information relevant to eligibility that was concealed or misrepresented by the firm; the firm's certification with OEO is based on certification by another entity whose certification has been revoked; a change in the certification standards or requirements; or OEO's decision to certify the firm was against the weight of the evidence. The firm may respond in writing to the stated reasons and provide arguments as to why the firm should remain certified. OEO shall provide written notice of its final decision regarding the status of the firm's

certification. Firms found to be ineligible may appeal to the commissioner pursuant to the procedures set forth in section (9) of this regulation.

(B) OEO shall immediately suspend a firm without adhering to the requirements in subsection (14)(A) of this regulation when an individual owner, whose ownership and control of the firm is necessary to the firm's certification, dies or is incarcerated.

(14) OEO will use the following standards in determining ownership:

(A) In considering whether a minority or woman owns a firm, OEO will consider all relevant facts viewed as a whole, including the origin of all assets and how and when they were used to acquire the ownership interest in the firm. All transactions for the establishment of ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices;

(B) The contribution of capital or expertise by the minorities or women to acquire their ownership interests in a firm shall be real, substantial, and continuing, going beyond *pro forma* ownership of the firm as reflected in ownership documents. Proof of contribution of capital shall be submitted at the time of the application. When the contribution of capital is through a loan, documentation must be provided to OEO of the value of assets used as collateral for the loan. Examples of insufficient contributions include: a promise to contribute capital, capitalization not commensurate with the value for the firm, participation as employee rather than a manager, or an unsecured note payable to the firm or an owner or former owner who is not a minority or woman. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan;

(C) Securities held in trust, or by a guardian for a minor, shall not be considered as held by a minority or woman in determining the ownership or control of a firm. However, securities or assets held in trust are considered as held by a minority or a woman for purposes of determining ownership of the firm if—

1. The beneficial owner of securities or assets held in trust is a minority or a woman, and the trustee is the same or another such individual;

2. The beneficial owner of a trust is a minority or a woman who, rather than the trustee, exercises effective control over the management, policy-making, and daily



activities of the firm; or

3. Assets held in a revocable living trust may be counted only if the same minority and/or woman is the sole grantor, beneficiary, and trustee;

(D) In determining ownership of a firm, assets or interests acquired in the following ways will be considered held by a minority or woman:

1. From a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with these regulations; or

2. Through inheritance, or otherwise because of the death of the former owner;

(E) Expertise of a minority or woman applicant may be regarded as a contribution toward ownership if the minority or woman has a significant financial investment in the firm and if the expertise is—

1. In a specialized field;

2. Of outstanding quality;

3. In areas critical to the firm's operations;

4. Indispensable to the firm's potential success;

5. Specific to the type of work the firm performs; and

6. Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm;

(F) Ownership and control of the firm by the minorities or women must be real, substantial, and continuing. The minorities or women shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with ownership, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-minority or male a priority or superior right to a firm's profits, compared to the minority or woman owner, are grounds for denial;

(G) The applicant must show that ownership has not been acquired as a gift or by transfer without adequate consideration from a non-minority or male, within one (1) year before application. Thereafter, it is presumed that ownership is not held by the minority or woman if received from a non-minority or male who—

1. Continues to be involved in the same firm for which the applicant is seeking certification or is an affiliate of that firm in a manner that suggests control of the firm;

2. Continues to be involved in the same or similar line of business that suggests control of the firm; or

3. Is engaged in an ongoing business relationship with the firm, or an affiliate of

the firm, for which the individual is seeking certification;

(H) To overcome the presumption in subsection (15)(G), the minority or woman must clearly demonstrate to OEO that—

1. The gift or transfer to the minority or woman was made for reasons other than obtaining certification; and

2. The minority or woman actually controls the management, policy, and daily operations of the firm, notwithstanding the continuing participation of a non-minority or male who provided the gift or transfer;

(I) When marital assets (other than the assets of the firm in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by a minority or woman spouse, OEO will deem the ownership interest in the firm to have been acquired by the minority or woman with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which the spouse is domiciled. A copy of the document legally transferring and renouncing the non-minority or male spouse's rights in the jointly-held or community assets used to acquire an ownership interest in the firm must be included with the firm's application. OEO cannot count a greater portion of joint or community property assets toward ownership than applicable state law would recognize as belonging to the minority or woman owner of the applicant firm; and

(J) A contribution of capital may be real and substantial even though financing agreements, contracts for the purchase or sale of real estate or personal property, bank signature cards, and the like, require the co-signature of a spouse who is not a minority or a woman.

(15) OEO will use the following standards in determining control:

(A) The minority or women owners must have the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy, and operations. There can be no restrictions upon the minority or woman's discretion;

(B) Only independent firms are eligible for certification. A firm is independent if its viability does not depend on its relationship with another firm or firms. In determining whether a firm is independent, OEO will consider the firm's relationships with non-M/WBEs in areas such as personnel, facilities, equipment, and financial and bonding support and other resources. OEO must consider whether a pre-

sent or recent employer/employee relationship between minority or women owners of the applicant and any non-M/WBE firms or persons associated with those firms compromise the independence of the applicant. OEO will examine the firm's relationship with any applicable contractor to determine whether a pattern of exclusive or primary dealings with a contractor compromises the independence of the potential firm;

(C) There can be no restrictions through corporate charters, by-laws, contracts, or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-minority or non-female partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the minority or woman, without the cooperation or vote of any non-minority or male, from making any business decision of the firm. This does not preclude a spousal co-signature on documents;

(D) A minority or woman must hold the highest official position in the firm (e.g., chief executive officer or president). Board meeting minutes must be provided to verify the results of the most recent officer election, if applicable;

(E) In a corporation, the minority or women owners must control the board of directors. Shareholder meeting minutes and by-laws must be provided to verify who is elected to the board and establish who controls it. In a partnership, one (1) or more of the minority or women owners must serve as general partners, with control over all partnership decisions. A written partnership agreement must be provided. In a limited liability corporation (LLC), the minority or women owners must be the managing members. The operating agreement must be provided to OEO;

(F) Certification will not be denied solely because non-minorities or males may be involved with a firm as owners, managers, employees, stockholders, officers, or directors. Non-minorities or males must not, however, have or exercise the power to control the firm, or be disproportionately responsible for the daily operations of the firm;

(G) The minority or women owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are non-minorities or males. Such delegations of authority must be revocable, and the minority or women owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of



the minority or women owners in the firm's overall affairs must be such that OEO can reasonably conclude that the owner actually exercises control over the firm's operations, management, and policy;

(H) The minority or women owners must have an overall understanding of, and managerial and technical competence or experience directly related to, the type of business in which the firm is engaged and the firm's operations. The minority or women owners are not required to have experience or expertise in every critical area of the firm's operation, or to have greater experience or expertise in a given field than managers or key employees. The minority or women owners must have the ability to evaluate information presented by other participants in the firm's activities and be able to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or book-keeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate competency of the business's area of expertise and control over its daily operations;

(I) If state or local law requires the business to maintain a particular license or other credential in order to own or operate a certain type of firm, then the minority or women owners who exercise majority control of that type of business must possess the required license or credential. If state or local law does not require those persons to have such a license or credential in order to own or operate such a firm, OEO will not deny certification solely on the grounds that the minority or women owners lack such license or credential. However, OEO will consider the absence of the license or credential as one (1) factor in determining whether the minority or women owners actually exercise daily control over the firm;

(J) OEO will consider the difference in remuneration between the minority or women owners and other participants in the firm in determining whether to certify a firm. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's practices and policies concerning the reinvestment of income, and any other explanations for the difference offered by the firm. Based upon the evidence, OEO will make a determination about whether a firm is controlled by its minority or women owners, even though that owner's remuneration may be lower than other participants in the firm. In a case where a non-minority or male owner has formerly controlled the firm, and a minority or a female

owner now controls it, OEO may consider the difference between the remuneration of the former and current controller of the firm as a factor in determining who exercises true control over the firm, particularly when the non-minority or male owner remains involved with the firm and continues to receive greater compensation than the minority or female owner;

(K) In order to be viewed as controlling a firm, a minority or female owner cannot engage in outside employment or other business interests that could conflict with the management of the firm or prevent them from devoting sufficient time and attention to the affairs of the firm to control its daily activities. For example, absentee ownership or management of a firm and part-time work in a full-time firm are viewed as not exercising effective daily control over the firm;

(L) Minority or women owners may control a firm even though one (1) or more of the individual's immediate family members (who themselves are not minorities or women) participate in the firm as a manager, employee, owner, or in some other capacity. OEO will consider how much control the minority or women owners exercise as compared to other persons involved in the business, without regard to whether those other persons are immediate family members;

(M) If OEO cannot determine that the minority or woman owner versus the family as a whole actually controls the firm, then the minority or female owners have failed to meet their burden of proof concerning control, even though they may participate significantly in the firm's activities;

(N) If a firm was formerly owned and controlled by a non-minority or male who still remains involved in the firm, then the minority or women owners seeking certification must show that—

1. The transfer of ownership and/or control to the minority or women owners was made for reasons other than to obtain certification; and

2. The minority or women owners actually control the management, policy, and daily operations of the firm, notwithstanding the continuing participation of a non-minority or male who formerly owned and/or controlled the firm;

(O) In determining whether a firm is actually controlled by its minority or women owners, OEO will consider whether the firm owns equipment necessary to perform its work. Lack of control by a minority or woman owner will not be found solely because a firm leases, rather than owns such equipment, if leasing equipment is a normal industry practice, and the lease is not with a

contractor or other party that compromises the independence of the firm;

(P) Lack of control by a minority or woman owner will not be found solely because a firm leases employees so long as the minority or women owners maintain an employer-employee relationship with the leased employees and are responsible for hiring, firing, training, assigning, and otherwise controlling the leased employees;

(Q) A firm operating under a franchise or license agreement may be controlled by a minority or woman even though the franchise or license arrangement imposes restraints relating to standardized quality, advertising, accounting format, and the like, so long as the firm has the right to profit from its efforts, bears the risk of loss commensurate with ownership, and meets all other requirements of section 37.020, RSMo, and these regulations. Factors that indicate a lack of control by the minority or woman owner include common management or excessive restrictions on the sale or transfer of the franchise interest or license;

(R) In order for a partnership to be deemed controlled by a minority or a woman, any non-minority or male partners must be incapable of, without the specific written authorization of the minority or female partners, contractually binding the partnership. A written partnership agreement is necessary to establish both ownership and control;

(S) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by a woman or minority; and

(T) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification if otherwise qualifying. Such a firm must be controlled by Indians or Native Hawaiians.

(16) An applicant that is not owned by minorities or women, but is instead owned by another firm, even though that firm is a certified M/WBE, is ineligible to be certified as an M/WBE except as provided below:

(A) If the minority or women owners own and control the applicant firm through a parent or holding company, established for tax, capitalization, or other purposes consistent with industry practices, and the parent or holding company, in turn, owns and controls an operating subsidiary, OEO may certify the subsidiary if it otherwise meets all requirements of these regulations. In this situation, the individual owners and operators of the parent or holding company are deemed to control the subsidiary through the parent or



holding company;

(B) OEO may certify such a subsidiary as an M/WBE if and only if the subsidiary is fifty-one percent (51%) cumulatively owned by a minority or a woman. The following examples illustrate how the provision for cumulative ownership works:

1. Example 1: A minority or a woman owns one hundred percent (100%) of a holding company which in turn has a wholly-owned subsidiary. The subsidiary may be certified as an M/WBE, if it meets all other requirements of these regulations;

2. Example 2: A minority or woman owns one hundred percent (100%) of a holding company which, in turn, owns fifty-one percent (51%) of a subsidiary. The subsidiary may be certified, if it meets all other requirements of these regulations;

3. Example 3: A minority or woman owns eighty percent (80%) of a holding company which in turn, owns seventy percent (70%) of a subsidiary. In this case, the cumulative ownership of the subsidiary by a minority or a woman is fifty-six percent (56%) (80% of 70% = 56%). This is more than the fifty-one percent (51%) threshold, so it may be certified as an M/WBE, if it meets all other requirements of these regulations;

4. Example 4: A minority or a woman owns sixty percent (60%) of the holding company, which, in turn, owns fifty-one percent (51%) of a subsidiary. In this case, the cumulative ownership would be thirty-one percent (31%) (60% of 51% = 31%). This is less than the required fifty-one percent (51%) threshold, so it cannot be certified as an M/WBE; or

5. Example 5: Someone other than the minority or women owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by minorities or women, through the holding or parent company, it cannot be certified as an M/WBE because it does not meet the control requirement.

(17) Joint Venture. As required by section 37.020.1(3)(b), RSMo, in order to qualify for joint venture certification, at least fifty-one percent (51%) of the ownership interest in the joint venture must be held by minorities, and the management and daily business operations of the joint venture must be controlled by one (1) or more of the minorities who own it. OEO shall require a joint venture applicant to submit documentation including, but not limited to, a copy of the joint venture agreement and a copy of the certification issued to the M/WBE participant in the joint venture. Any changes proposed in the joint venture agreement must be filed with and approved by OEO prior to the implementa-

tion of the changes in order to maintain certification. Failure to comply may result in revocation of the joint venture certification.

AUTHORITY: section 37.023, RSMo 2000. This rule originally filed as 1 CSR 40-1.080. Original rule 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: 37.023, RSMo 1995.*

1 CSR 10-17.050 Minority and Women's Business Enterprise Participation in Procurement Process

PURPOSE: This rule establishes a program to encourage and facilitate the utilization of Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) (collectively, M/WBEs) by assuring that they have the maximum opportunity to participate in procurements financed in whole or in part with state funds.

(1) The Office of Equal Opportunity (OEO) will provide assistance to Minority and Women's Business Enterprises (M/WBEs). Assistance provided may include, but is not limited to: workshops, bid history and pricing abstracts, minority vendor registration, access to state agency procurement staff, inclusion in the M/WBE online directory, notification of bid opportunities to promote increased participation, and referrals to agencies that may provide specialized training or assist with financing and bonding issues.

(2) By collaborating with the Divisions of Purchasing and Facilities Management, Design and Construction within the Office of Administration, OEO will encourage participation in the procurement process and fairness in consideration of bids and proposals submitted by M/WBEs. Programs and procedures designed by OEO to accomplish these objectives may include: providing diversity training for state procurement personnel; identifying minority and women personnel to serve on evaluation committees; closely reviewing the requirements for bonding; notifying M/WBEs of procurement opportunities online; and actively collaborating with executive branch agencies.

(3) OEO will compile and maintain a directory of certified M/WBEs. The directory will include each firm's name, address, phone number, email address, firm's status as an

M/WBE, age of the firm, and the categories of work the firm has been certified to perform. The directory will be available online to bidders, contractors, and the public.

(4) OEO will support the Division of Purchasing in setting individual contract percentages for M/WBEs to help meet the State's Annual Aspirational Program Goals and work to further its programs in accordance with section 37.020, RSMo; any successor or similar statutes; executive orders based upon a study to determine the availability of qualified M/WBEs; and any other pertinent information. OEO will periodically review M/WBE contract goal setting procedures, M/WBE utilization percentages, and outreach and assistance programs to determine whether existing activities should be continued or revised and whether new programs should be implemented.

(5) By collaborating with the Office of Administration, Division of Purchasing, and the Division of Facilities Management Design and Construction, and executive branch agencies, OEO may work with agencies to assist in the achievement of the State's Annual Aspirational Program. OEO may also recommend to agencies solicitations in which M/WBE requirements may be appropriate; recommend that qualified M/WBEs be included on solicitation lists; and, when feasible, recommend structuring contracts to maximize potential M/WBE and small business participation.

(6) The total dollar value of a purchase procured from an M/WBE may be counted toward meeting established M/WBE goals in procurements under twenty-five thousand dollars (\$25,000) financed in whole or in part with state funds.

(7) After the contract is established, OEO shall monitor the activity of the contractor to assure compliance with the M/WBE utilization stipulated in the contract and in accordance with applicable statutes and regulations.

(8) Contractors that fail to comply with their M/WBE contractual requirements may be considered in breach of contract and may be subject to the remedies in the contract and as otherwise allowable by law.

(9) OEO shall maintain statistics and issue periodic reports about M/WBE participation and recommendations for improvement.

AUTHORITY: section 34.050, RSMo 2000,



and section 37.020, RSMo Supp. 2014. This rule originally filed as 1 CSR 40-1.070. Original rule 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 37.020, RSMo 1990, amended 2014.*