
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;

(C) Coordination of the state recycling program; and

(D) Certification of Minority and Women Business Enterprises.

AUTHORITY: sections 34.050, RSMo Supp. 1997 and 536.023, RSMo 1994.* Original rule filed Oct. 20, 1997, effective May 30, 1998.

*Original authority: 34.050, RSMo 1939, amended 1945, 1993, 1995; and 536.023, RSMo 1975, amended 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, 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) Joint venture. 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;

(H) Minority. The definition contained in section 33.750, RSMo is incorporated by reference;

(I) Minority business enterprise (MBE). The definition contained in section 37.020, RSMo is incorporated by reference;

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

(K) OA. The Office of Administration;

(L) On-site review. The observation of the vendor in its normal business surroundings by such means as visual observation, verbal questions, and a determination of the general pattern of operations of the vendor;

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

(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) 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 business enterprise or (WBE). The definition contained in section 37.020, RSMo is incorporated by reference.

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 1939, amended 1945, 1993, 1995.

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 authority 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 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).

(A) Formal bids should be received in the division 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.

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

(D) When the division decides that all bids are unacceptable and circumstances do not permit a rebid, negotiations may be conducted with only those bidders who submitted bids in response to the IFB. No additional bidders 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.

(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 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 bids shall be considered late and will not be opened.

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

(D) 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:

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; or
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 sit-

uations the division will monitor the market for developing competition; and

(C) The following guidelines will be utilized to determine if supplies may be purchased 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; 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.

(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.

(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 from 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 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 vendors may be returned after the finalization of the award. If the successful

vendor fails to accept the contract, the amount of the bid/proposal security shall be forfeited to the state.

3. If a performance security is required, the bid/proposal security of the successful vendor 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 shall 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 vendor 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 vendor. This withdrawal will be considered only after receipt of a written request and supporting documentation from the vendor. Withdrawal shall be the vendor'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) 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 over bidders whose products do not qualify. Failure to provide a certification may result in forfeiture of any preference;

(G) Bids/proposals submitted by qualified organizations for the blind and sheltered workshops shall be entitled to five (5) bonus points in addition to other points awarded during the evaluation process. Qualified bidders should notify the division of their status upon submittal of their bid/proposal;

(H) In addition to cost, subjective judgment may be utilized in the evaluation of bids/proposals provided that the method is published in the solicitation document;

(I) 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 vendor's expense if return of the samples is stipulated in the vendor's bid/proposal. Samples submitted by a vendor who receives the award may be kept for the duration of the contract for comparison with shipments received;

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

(K) When bids are equal in all respects, any preferences shall be applied in accordance with applicable statute. If all such bidders 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 vendors who are considered equal. If this is not practical, the drawing will be witnessed by a disinterested person;

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

(M) After an award is made, the solicitation file or facsimile thereof shall be made available to the public for inspection at any time during regular working hours;

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

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

(P) 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.

(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.

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 1939, amended 1945, 1993, 1995.

1 CSR 40-1.060 Vendor Registration, Official Mailing Lists, Suspension and Debarment

PURPOSE: This rule describes procedures for registering vendors for inclusion on the official mailing lists and procedures for suspension and debarment of vendors.

(1) Any individual, business or organization may submit a vendor registration application to the division in order to be added to the official vendor data base. Proof of financial stability and reliability must be furnished if requested. It is the vendor's sole responsibility to notify the division in writing of any subsequent change of fact set forth in the application including, but not limited to company ownership, officers, address, or federal employer identification number.

(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. Unless exempt pursuant to section 351.572, RSMo, 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.

(3) Registered active vendors will be selected from the official vendor data base and placed on solicitation mailing lists on a rotational basis. The solicitation mailing list is not limited to registered vendors.

(4) If a vendor fails to respond to three (3) consecutive solicitation documents for the same class of item, the vendor's registration for that specific class of item may be inactivated. The vendor shall be mailed a formal notice of inactivation. The vendor may request reactivation by contacting the division.

(5) 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) The suspended vendor shall be removed from all solicitation mailing lists and any bids/proposals submitted by the 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.

(6) 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) The debarred vendor shall be removed from all solicitation mailing lists and any bids/proposals submitted by the 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.

(7) 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 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 1939, amended 1945, 1993, 1995.*

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

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

(1) The division will provide assistance to Minority Business Enterprises/Women Business Enterprises (MBE/WBEs). Services provided may include but are not necessarily limited to: workshops, bid history and pricing abstracts, minority vendor registration, exposure to state agency's procurement staff and contracting opportunities, MBE/WBE directory and newsletter to promote increased participation.

(2) The division will encourage participation in the procurement process and fairness in consideration of bids/proposals submitted by MBE/WBEs. Programs/procedures designed to accomplish these objectives may include: providing diversity training for state procurement personnel, utilization of minority and women personnel on evaluation committees, closely reviewing the requirements for bonding, targeted notice of procurement opportunities, etc.

(3) The division will compile, maintain and make available a directory of MBE/WBEs. The directory shall be available, upon

request, to all bidders and contractors. The directory shall specify the name of the MBE/WBE, the commodities or services it provides, its address, phone number and contact person.

(4) The division will establish MBE/WBE participation goals and programs in accordance with section 37.020, RSMo, any successor or similar statutes, or executive order based upon a study to determine the availability of qualified MBE/WBEs and any other pertinent information. MBE/WBE participation goals and programs shall be reviewed periodically to ascertain the need for continuance or revision of existing programs or the implementation of new programs.

(5) The division may establish MBE/WBE subcontracting goals and may require that bidders/offerors make a good faith effort to subcontract with MBE/WBEs. The division may designate those types of solicitations in which MBE/WBE subcontracting requirements would be appropriate.

(6) The following expenditures may be counted toward meeting established MBE/WBE goals:

(A) The total dollar value of a contract awarded to an MBE/WBE;

(B) The total dollars paid by a prime contractor to an MBE/WBE for supplies and materials provided to the state in fulfillment of the contract;

(C) The total dollar value of work subcontracted to an MBE/WBE by a prime contractor;

(D) That portion of the total dollar value subcontracted to a certified joint venture by a prime-contractor equal to the percentage of the ownership and control of the MBE/WBE partner in the joint venture; and

(E) Only expenditures to MBE/WBEs that perform a commercially useful function related to the delivery of the supplies required by the contract.

(7) After the contract is established, the division may monitor the activity of the contractor to assure compliance with the MBE/WBE utilization stipulated in their contract. The division may require the submission of regular reports from contractors documenting their MBE/WBE utilization.

(8) Contractors that fail to comply with the MBE/WBE utilization stipulated in their contract, may be considered to be in breach of contract and may be subject to such remedies as stipulated in the contract.

(9) The division shall maintain statistics and issue periodic reports about MBE/WBE participation.

AUTHORITY: sections 34.050, RSMo Supp. 1997 and 37.020, RSMo 1994. Original rule filed Oct. 20, 1997, effective May 30, 1998.*

**Original authority: 34.050, RSMo 1939, amended 1945, 1973, 1995; and 37.020, RSMo 1990.*

1 CSR 40-1.080 Minority/Women Business Enterprise Certification

PURPOSE: This rule establishes a program by which Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) may be certified by the division.

(1) The following standards shall be used by the division in determining whether an individual, business, or organization is eligible to be certified as a Minority Business Enterprise/Women Business Enterprise (MBE/WBE). The list is not meant to be all inclusive but shall serve as a guideline for certification of MBE/WBEs.

(A) At least fifty-one percent (51%) of the enterprise's ownership and control shall be held by minorities or women.

(B) All securities which constitute ownership and/or control of the enterprise for purposes of establishing it as an MBE/WBE under these regulations shall be held directly by a minority or woman.

(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 corporation.

(D) Ownership and control of the enterprise by the minorities/women shall be real, substantial, and continuing. The minorities/women shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with ownership interests.

(E) The minority or woman owner(s) shall possess the power to make day-to-day as well as major decisions on matters of management, policy and operation. There shall be no restrictions which limit the customary discretion of the minority or woman owner(s).

(F) The contribution of capital or expertise by the minorities or women shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, participation as an employee rather than a manager, etc.

(2) Any individual, business, or organization desiring certification as an MBE or WBE

shall submit an MBE/WBE Certification Application and required documentation to the division.

(A) An MBE/WBE applicant whose principal place of business is located in a state other than Missouri must provide proof of certification by that state, if such certification is available.

(B) MBE/WBE applicants which have been certified by an organization which maintains a certification memorandum of understanding with the Office of Administration may be certified by the division based upon their previous certification. In such case, the MBE/WBE must provide proof of certification.

(C) Certification by another state or organization does not guarantee certification by the division.

(D) All applications shall be reviewed by the division and approved or denied.

1. The division may conduct an on-site review at the applicant's place of business to verify status as a certifiable MBE/WBE. The state is not required to conduct on-site reviews if such review would require that the division incur unreasonable expenses to verify eligibility for certification. An example of an unreasonable expense would be travel outside the state of Missouri for an on-site review.

2. The division may require the applicant to submit documentation deemed necessary to determine eligibility for certification as an MBE/WBE. Examples of required documentation may include: proof of minority or female status, initial capital contribution information, income tax returns, partnership agreement, articles of incorporation, proof of ownership, etc.

(E) If an applicant is approved, a letter of approval and certification shall be mailed to the certified MBE/WBE.

(F) If an applicant is denied certification, it will be notified in writing. The notification will include reason(s) for the denial. Reasons for certification denial may include but are not limited to the following: improperly filed application, requested information not provided, failure to meet certification standards, inability to complete certification review.

(3) After certification, the MBE/WBE must notify the division of any changes of fact set forth in the application including, but not limited to: company ownership, officers, address, organizational structure, etc.

(4) All certifications, except joint ventures, shall be effective for a period not to exceed two (2) years.

(A) MBE/WBEs may request recertification by submitting a recertification application prior to the expiration date of their current certification.

(B) If an application for recertification is not submitted prior to the expiration date of the current certification, the business will be removed from the active certified list of vendors. In order to become recertified after the expiration date of the original certification, the applicant must submit the recertification application with an explanation of the delay.

(5) The division may revoke certification of an MBE/WBE. The following list shall serve as a guideline for revocation determinations (it is not intended to be all inclusive):

(A) Change in the organization or ownership structure of the business entity;

(B) Revocation of certification by another certifying entity; or

(C) Falsification of information on applications, bids, etc.

(6) Any certified MBE/WBE desiring certification of a joint venture shall submit an application and required documentation to the division.

(A) In order to qualify for joint venture certification the MBE/WBE partner must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risk, and profits of the joint venture.

(B) The division may require the applicant to submit documentation deemed necessary to determine eligibility for certification as a joint venture. Examples of required documentation may include: copy of the joint venture agreement and copy of certification issued to MBE/WBE participant.

(C) Joint venture certification shall be effective for a period not to exceed one (1) year.

(D) Any changes proposed in the joint venture agreement must be filed with and approved by the division prior to the implementation of the changes in order to maintain certification.

(7) The applicant may appeal certification denial or revocation actions by requesting that the determination be reviewed by the commissioner of administration or designee.

(A) Any request for review must be in writing and filed with the commissioner within twenty-one (21) calendar days after the date of receipt of the notice of denial or revocation. The request must set forth specific reasons why denial or revocation should be reversed.

(B) The commissioner's determination shall be final and shall be mailed to all parties involved.

(8) Third parties who have reason to believe that an enterprise has been wrongly denied or granted certification as an MBE/WBE or joint venture may file a third party challenge with the division. Challenges by third parties are not considered an appeal.

(A) The third party challenge must be submitted in writing along with supporting documentation in sufficient detail to support the allegations. The division 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) The MBE/WBE will be notified in writing that a challenge has been received by the division.

(E) The division will investigate the challenge and issue a written decision.

AUTHORITY: section 37.023, RSMo Supp. 1997. Original rule filed Oct. 20, 1997, effective May 30, 1998.*

**Original authority 1995.*