Chapter 326-50 WAC
PARTICIPATION PROGRAMS

WAC

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WAC 326-50-010 Participation programs, purpose and intent. It is the policy of the state of Washington to provide the maximum practicable opportunity for increased participation by minority and women-owned businesses in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector.

OMWBE is directed by RCW 39.19.030(1) to: "Develop, plan, and implement programs" to provide such opportunities for participation by qualified minority and women-owned businesses. OMWBE has found that there is a need to supplement the certification program in order to encourage MWBE participation in state contracts. Therefore, OMWBE will develop participation programs to advance the state of Washington's policy to mitigate the effects of societal discrimination, and to increase opportunities for minority and women-owned firms to do business with the state. The implementation of these programs will result in increased opportunities for MWBEs to develop and grow in the existing market place, and to assist them in establishing new business relationships with the state of Washington.

[Statutory Authority: Chapter 39.19 RCW. WSR 85-24-010 (Order 85-10), § 326-50-010, filed 11/25/85, effective 3/1/86.]

WAC 326-50-020 Definitions. For purposes of chapter 326-50 WAC;

(1) "Non-MWBE firm" means a firm or business which is not certifiable as a MWBE under chapter 39.19 RCW and its implementing regulations, or a firm which has chosen not to seek certification as a MWBE;

(2) Solely for purposes of participation programs as used in chapter 326-50 WAC, "MWBE" shall mean:

(a) Either an enterprise certified by OMWBE on or before November 22, 1985; or an enterprise which is certified at any time, provided such enterprise has been engaged in bona fide business activities as a minority or woman-owned business for at least one year prior to the filing of an agreement of intent with OMWBE, and

(b) Either an enterprise which is incorporated in the state of Washington as a Washington domestic corporation; or an enterprise whose principal place of business is located within the state of Washington for enterprises which are not incorporated.

(c) Nothing contained in subsections (a) and (b) shall be construed to include or allow foreign corporations to participate in any participation program.

(3) "Participation program" means programs created to supplement the certification program to encourage MWBE participation in state contracts in the areas of goods and services, construction, and personal services.

[Statutory Authority: Chapter 39.19 RCW. WSR 85-24-010 (Order 85-10), § 326-50-020, filed 11/25/85, effective 3/1/86.]

WAC 326-50-030 Business partnership program—Purchased goods and services, architecture, engineering and other consultants—Purpose and intent. (1) Purpose and intent. The primary purpose of this Participation Program I, hereinafter referred to as the business partnership program, is to increase opportunities for certified MWBEs to provide purchased goods and services, and architecture, engineering and other consultant services to state agencies and educational institutions. This program is designed to increase the number of MWBEs participating in state contracts, and to enhance the economic viability of certified businesses, by providing incentives to non-MWBE firms, both large and small, to develop ongoing business relationships with OMWBE certified firms.

(a) The business partnership program will be in effect as of March 1, 1986. This program is a prototype program, and will be periodically evaluated by OMWBE. After the program has been in effect for twelve months, OMWBE will evaluate the program to determine whether it is fulfilling the purposes for which it is designed.

(2) The program is designed to address several specific needs of minority and women firms by (a) increasing opportunities for providing purchased goods and services, and architecture, engineering and other consultant services, and (b) providing short-term and limited financial assistance, technical assistance, and networking.

[Statutory Authority: RCW 39.19.030(7). WSR 89-24-050, § 326-50-030, filed 12/1/89, effective 1/1/90. Statutory Authority: Chapter 39.19 RCW. WSR 85-24-010 (Order 85-10), § 326-50-030, filed 11/25/85, effective 3/1/86.]

WAC 326-50-040 Implementation of business partnership program. (1) Agreement of intent—Contents of agreement. In order to claim business partnership credit for contracts or other assistance provided to MWBEs, an agreement of intent must be filed with OMWBE by the non-MWBE firm within seven days of the commencement of the supplier-service contract. The agreement of intent to be filed with OMWBE must include such information as required by OMWBE.

(2) Evaluation committee.

(a) An evaluation committee will review each agreement of intent and make a recommendation to the director. Evalu-

ation committees appointed by OMWBE will consist of a representative from the private sector, a representative from the MWBE community, and a state agency representative. During the prototype phase of the program, the purchased goods and services workgroup, appointed by the OMWBE advisory committee, will serve as the evaluation committee.

(b) The office, through the evaluation committee, will monitor the progress of the agreement of intent against the details outlined in the agreement of intent as filed with OMWBE, or as approved under subsection (3) below.

(3) The director may approve the agreement, with or without modifications, or disapprove the agreement. Upon approval of the agreement, OMWBE will establish an account for non-MWBE firms under the number assigned to the agreement of intent. Upon proof of completion of the agreement, or portions thereof if applicable, credits for the negotiated dollar value of the contract will be placed in the non-MWBE firm's account.

(4) The credit received by the non-MWBE firms will be calculated from the firm's documented expenditures. Prior to initiating a goods or service contract or other approved assistance, the non-MWBE firm must file an agreement of intent with OMWBE. Upon approval of the plan, the firm will thereafter document the actions that have been taken on behalf of MWBEs. The actual dollar value to be credited may be established either before or after the program is concluded, but the agreement of intent must set the standards for evaluation and receive approval by OMWBE. The amount of credit that will be given for any contracted good or service or other approved assistance will be established between OMWBE and the non-MWBE firm.

[Statutory Authority: Chapter 39.19 RCW. WSR 85-24-010 (Order 85-10), § 326-50-040, filed 11/25/85, effective 3/1/86.]

WAC 326-50-050 Utilization of credits in business partnership account. (1) The credits in a non-MWBE firm's business partnership account may be applied to goods and services, architecture, engineering and other consultant services contracts or requests for proposals. The credits cannot apply to MWBE requirements set on construction or public works contracts.

(2) Only the value of those transactions requested and approved may be applied against MWBE requirements set by state agencies or educational institutions in meeting contract specifications.

(3) When the non-MWBE firm bids on a state contract, it may utilize the credit it has established with OMWBE by applying the credit against the MWBE participation requirements set on contracts or requests for proposals for purchase of goods and services, architecture, engineering and other consultant services.

(4) The state agency or educational institution shall give the non-MWBE firm equal consideration as other vendors utilizing certified MWBE vendors in evaluating the bids or requests for proposal. The state agency or educational institution may count the credit toward its annual overall goals.

(5) The credit obtained by an agreement of intent shall only be used once. Additional credits may be obtained by filing additional agreements of intent with OMWBE.

(6) If credits on file with OMWBE are invoked by the non-MWBE firm on more than one outstanding bid or proposal, the credits shall be utilized on the first contract awarded.

(7) The state agency letting a contract shall contact the OMWBE to verify the existence of credits on file at the time an apparent low bidder using business partnership credits to meet the MWBE requirements of the contract is identified. The state agency letting the contract shall notify the OMWBE of the award of the contract, and the number of credits utilized by the non-MWBE firm to meet the MWBE requirements of the contract.

(8) If credits are used on one contract (first awarded), the non-MWBE firm, if the apparent low bidder, may be allowed a period of up to twenty-four working hours to secure new or additional MBE or WBE subcontractors. If written proof of subcontractors with new or additional MBE or WBE firms is not provided to the agency within that time, agency may award contract pursuant to WAC 326-40-020.

(9) The business partnership credits will remain in the account established for the non-MWBE firm for one year after the credits are accrued, or for one year from the time the contract in the agreement of intent is completed, as stipulated in the agreement of intent. All unused credit will be voided six months after the effective date, in the event the business partnership program is discontinued.

[Statutory Authority: RCW 39.19.030(7). WSR 89-24-050, § 326-50-050, filed 12/1/89, effective 1/1/90. Statutory Authority: Chapter 39.19 RCW. WSR 85-24-010 (Order 85-10), § 326-50-050, filed 11/25/85, effective 3/1/86.]

WAC 326-50-060 Default by either party to the agreement of intent. The parties to the agreement of intent (the non-MWBE firm and MWBE firm) reserve their rights to pursue legal remedies based upon the underlying contract between them. In the event of default by either party, appropriate action can be taken by either to assure compliance or to recover damages. Approval of the agreement of intent by OMWBE does not constitute a ruling that the contract is in compliance with state laws, nor that either party is capable of performing its portion of the agreement. Approval of the agreement by OMWBE merely signifies that OMWBE believes the fulfillment of this agreement will further the goals of the program established by the state under chapter 39.19 RCW. If the MWBE is unable or unwilling to perform the agreement of intent, the non-MWBE firm may utilize its right to substitute under WAC 326-30-080. OMWBE also reserves the authority to apply the full range of sanctions available under the law against the parties to the agreement of intent, as appropriate, if perjured agreements of intent are filed, or spurious claims for credits are made.

[Statutory Authority: Chapter 39.19 RCW. WSR 85-24-010 (Order 85-10), § 326-50-060, filed 11/25/85, effective 3/1/86.]