

Chapter 326-02 WAC

GENERAL PROVISIONS

WAC

326-02-010	Purpose.
326-02-020	Applicability.
326-02-030	Definitions.
326-02-031	Office of minority and women's business enterprises account—Created—Purpose.
326-02-033	State agency and educational institution fees.
326-02-034	Political subdivision fees.
326-02-040	Prohibited activities with regard to chapter 39.19 RCW.
326-02-045	Factors considered in determining performance of commercially useful function.
326-02-050	Penalties which may be imposed.
326-02-060	Factors considered in determining penalties.
326-02-070	Suspension of contract.
326-02-080	Suspension of certification.
326-02-090	Procedures for suspension, hearing provided.

WAC 326-02-010 Purpose. The purpose and intent of chapter 120, Laws of 1983, and of Title 326 WAC is to provide the maximum practicable opportunity for increased participation by minority, women, and socially and economically disadvantaged-owned and controlled businesses in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector. This purpose will be accomplished by encouraging the full use of existing minority, women, and socially and economically disadvantaged-owned and controlled businesses and the entry of new and diversified minority, women, and socially and economically disadvantaged-owned and controlled businesses into the marketplace. These rules shall be applied and interpreted to promote this purpose.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-02-010, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.-030(7). WSR 92-11-007, § 326-02-010, filed 5/11/92, effective 6/11/92. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-02-010, filed 10/28/83.]

WAC 326-02-020 Applicability. Title 326 WAC applies to all applications for certification, the linked deposit program, and to all public works and procurement by state agencies and educational institutions: Provided, That this title does not apply where it is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state. In such a case, the conflicting portions of this chapter are inoperative solely to the extent of the conflict and with respect to the agencies directly affected.

[Statutory Authority: RCW 39.19.030, 43.86A.060, and 2007 c 500 §§ 1 and 2. WSR 08-03-116, § 326-02-020, filed 1/22/08, effective 2/22/08. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-020, filed 5/11/92, effective 6/11/92. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-02-020, filed 10/28/83.]

WAC 326-02-030 Definitions. Words and terms used in this title shall have the same meaning as each has under chapter 120, Laws of 1983, unless otherwise specifically provided in this title, or the context in which they are used

clearly indicates that they should be given some other meaning.

(1) "Advisory committee" means the advisory committee on minority, women, and socially and economically disadvantaged individual's business enterprises.

(2) "Broker" means a person that provides a bona fide service, such as professional, technical, consultant, brokerage, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of a contract.

(3) "Certified business" or "certified" means a business or the status of a business that has been examined by the Washington state office of minority and women's business enterprises and deemed to be a minority business enterprise (MBE), a women's business enterprise (WBE), a minority woman's business enterprise (MWBE), a combination business enterprise (CBE), or socially and economically disadvantaged business enterprise (SEDBE).

(4) "Class of contract basis" means an entire group of contracts having a common characteristic. Examples include, but are not limited to, personal service contracts, public works contracts, leases, purchasing contracts, and contracts for specific types of goods and/or services.

(5) "Combination business enterprise" or "CBE" means a small business concern organized for profit, performing a commercially useful function, that is fifty percent owned and controlled by one or more minority men or MBEs certified by the office and fifty percent owned and controlled by one or more nonminority women or WBEs certified by the office. The owners must be United States citizens or lawful permanent residents.

(6) "Commercially useful function" means the performance of real and actual services which are integral and necessary in the discharge of any contractual endeavor, and not solely for the purpose of obtaining certification or obtaining credit for participation goal attainment.

(7) "Common industry practices" means those usages, customs, or practices which are ordinary, normal, or prevalent among businesses, trades, or industries of similar types engaged in similar work in similar situations in the community.

(8) "Conduit" means a certified business which agrees to be named as a subcontractor on a contract in which such certified business does not perform the work but, rather, the work is performed by the prime contractor, prime consultant, material supplier, purchasing contractor, or any other noncertified business.

(9) "Contract" means a mutually binding legal relationship (including a purchase order, lease, or any modification thereof), which obligates the seller to furnish goods or services (including construction), and the buyer to pay for them.

(10) "Contract by contract basis" means a single contract within a specific class of contracts.

(11) "Contractor" means a party who enters into a contract directly with a state agency or educational institution.

(12) "Corporate-sponsored dealership" means a business that does not meet the requirements for certification but is participating in a program specifically developed by a national or regional corporation to address the present-day issue of lack of opportunities for minorities or women in the dealership industry.

(13) "Director" means the director of the office of minority and women's business enterprises.

(14) "Economically disadvantaged individuals" means socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(15) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

(16) "Front" means a business which purports to be eligible for certification but is not in fact legitimately owned and controlled by minorities, women, socially and economically disadvantaged individuals, or a combination thereof.

(17) "Goods and/or services" means all goods and services, including professional services.

(18) "Graduation" means the business is no longer certified because it is no longer a small business concern.

(19) "Heavy construction" means construction other than building construction; e.g., highway or street, sewer and pipeline, railroad, communication and power line, flood control, irrigation, marine, etc.

(20) "Joint venture" means a partnership of two or more persons or businesses created to carry out a single business enterprise for profit, for which purpose they combine their capital, efforts, skills, knowledge or property and in which they exercise control and share in profits and losses in proportion to their contribution to the enterprise.

(21) "Legitimately owned and controlled" means that minorities, women, socially and economically disadvantaged individuals, or a combination thereof, own at least fifty-one percent interest in the business (unless the business qualifies as a corporate sponsored dealership under the provisions of subsection (12) of this section and WAC 326-20-050(4)); and the minorities, women, socially and economically disadvantaged individuals, or combination thereof, possess and exercise sufficient expertise specifically in the firm's field of operation to make decisions governing the long-term direction and the day-to-day operations of the firm.

(22) "Manufacturer" means a business which owns, operates, or maintains a factory or establishment that produces or creates goods from raw materials or substantially alters goods before reselling them.

(23) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black: Having origins in any of the black racial groups of Africa;

(b) Hispanic: Of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands; or

(d) American Indian or Alaskan native: Having origins in any of the original peoples of North America.

(24) "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by the office. The minority owners must be United States citizens or lawful permanent residents.

(25) "Minority women's business enterprise" or "MWBE" means a small-business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority women and is certified by the office. The owners must be United States citizens or lawful permanent residents.

(26) "Office" means the office of minority and women's business enterprises of the state of Washington.

(27) "Pass-through" means a certified business which buys goods from a noncertified business and simply resells those goods to the state, state contractors or other persons doing business with the state for the purpose of allowing those goods to be counted towards fulfillment of WBE or MBE goals.

(28) "Person" means one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

(29) "Personal net worth" means the socially and economically disadvantaged individual's net personal assets and liabilities, excluding an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence. If the statement of personal net worth that an individual submits shows that the individual's personal net worth exceeds seven hundred fifty thousand dollars, the individual's economic disadvantage is rebutted.

(30) "Procurement" means the purchase, lease, or rental of any goods or services.

(31) "Public works" means all work, including construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

(32) "Regular dealer" means a certified business that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

(33) "Services" in the context of "goods and/or services," means all services including, but not limited to, client services, personal services, and purchased services as defined in RCW 39.29.006.

(34) "Socially disadvantaged individuals" means those individuals who have been subjected to racial or ethnic prejudice or cultural bias, gender, disability, long-term residence in an isolated environment, or other similar causes negatively impacting entry into or advancement in the business world within American society because of their identities as members of groups and without regard to their individual quali-

ties. Social disadvantage must stem from circumstances beyond their control.

(35) "Socially and economically disadvantaged business enterprise" or "SEDBE" means a small-business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more socially and economically disadvantaged individuals or socially and economically disadvantaged business enterprises certified by the office. The socially and economically disadvantaged owners must be United States citizens or lawful permanent residents.

(36) "Socially and economically disadvantaged individual" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Found to be a socially and economically disadvantaged individual on a case-by-case basis by OMWBE; or

(b) A member of one of the following groups that are presumed to be socially and economically disadvantaged:

(i) Minority;

(ii) Women;

(iii) 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.

(37) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. "State agency" does not include the judicial or legislative branches of government except to the extent that procurement or public works for these branches is performed by a state agency.

(38) "Subcontractor" means a party that indirectly provides goods or services, including but not limited to construction, to a state agency or educational institution through a contractor.

(39) "Supplier" means a manufacturer or regular dealer that:

(a) Provides or furnishes goods or materials;

(b) Performs a commercially useful function; and

(c) Is not considered a conduit, front, pass-through or broker.

(40) "Switch business" means a business which was previously owned and controlled by a man, men or nonminorities, or individuals who are not socially and economically disadvantaged, which has made technical changes to its business structure so that it is now purportedly owned and controlled by a woman or women or by a minority person or persons, or by a socially and economically disadvantaged individual or individuals, but continues to operate in substantially the same manner as it did prior to the written revisions of the business structure.

(41) "Women's business enterprise," "women-owned business enterprise," or "WBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by the office. The women owners must be United States citizens or lawful permanent residents.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-02-030, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19-030(7). WSR 96-24-085, § 326-02-030, filed 12/3/96, effective 1/3/97. Statutory Authority: RCW 39.19.030. WSR 94-11-116, § 326-02-030, filed

(5/11/11)

5/18/94, effective 6/18/94. Statutory Authority: RCW 39.19.030(7). WSR 92-24-107, § 326-02-030, filed 12/2/92, effective 1/2/93; WSR 92-11-007, § 326-02-030, filed 5/11/92, effective 6/11/92; WSR 89-24-047, § 326-02-030, filed 12/1/89, effective 1/1/90. Statutory Authority: Chapter 39.19 RCW. WSR 88-12-060 (Order 88-5), § 326-02-030, filed 5/31/88; WSR 88-08-031 (Order 88-4), § 326-02-030, filed 4/1/88; WSR 87-18-030 (Order 87-6), § 326-02-030, filed 8/27/87; WSR 86-17-018 (Order 86-2), § 326-02-030, filed 8/11/86; WSR 85-14-101 (Order 85-6), § 326-02-030, filed 7/2/85; WSR 84-09-002 (Order 84-5), § 326-02-030, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-02-030, filed 10/28/83.]

WAC 326-02-031 Office of minority and women's business enterprises account—Created—Purpose. The office of minority and women's business enterprises account is created in the custody of the state treasurer for the purpose of defraying costs of the office in administering chapter 39.19 RCW. Only the director or the director's designee may authorize expenditures from the account. Money in the account may be spent only after appropriation. The revolving fund account is subject to the allotment procedures provided under chapter 43.88 RCW. The director of the office of financial management shall prescribe appropriate accounting procedures to accurately record payments to the fund from businesses, state agencies and educational institutions, and political subdivisions and expenditures from the fund.

[Statutory Authority: 1993 c 195. WSR 93-16-080, § 326-02-031, filed 8/3/93, effective 9/3/93.]

WAC 326-02-033 State agency and educational institution fees. The office shall charge a fee to each state agency and educational institution to assist in the support of the state's minority and women's business enterprise program. The fee will be apportioned according to the state agency and educational institution's expenditure level of funds which are subject to chapter 39.19 RCW and Title 326 WAC.

State agency and educational institution's charges that are five-hundred dollars or less will be billed once in a biennium. Charges over five hundred dollars will be billed at least yearly to limit administrative expenditures. The office will submit invoices to state agencies and educational institutions and payments will be due on or before July 15 unless, the state agency or educational institution is billed more frequently than yearly.

[Statutory Authority: 1993 c 195. WSR 93-16-080, § 326-02-033, filed 8/3/93, effective 9/3/93.]

WAC 326-02-034 Political subdivision fees. (1) It is the intent of the state legislature that political subdivisions within the state of Washington contribute to the costs of the state's certification program for minority and women's business enterprises. For the purpose of this section, political subdivisions means any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington that administers a policy or program, or funds from whatever source, which requires or encourages the use of certified minority, women, or disadvantaged business enterprises.

(2) Effective July 1, 1993, the office shall allocate a portion of its biennial operational costs to political subdivisions. Each political subdivision shall pay a proportionate share of

[Ch. 326-02 WAC p. 3]

this allocation based on the formula set forth in subsection (4) of this section.

(3)(a) The fee charged to each political subdivision for the period, July 1, 2003 - June 30, 2005, and subsequent biennia unless revised by rule, shall be based on the annual average of expenditures for capital projects, supplies and other services for fiscal years 1999-2001 as reflected in the state auditor's online BARS report, when available. Data on the annual average of capital expenditures by the transit districts during the relevant period will be taken from a report produced by the Washington state department of transportation entitled, *2001 Summary of Public Transportation Systems in Washington State*. Data on the annual average of expenditures by school districts and educational service districts will be obtained from the office of the superintendent of public instruction. The basis for the fee to be charged to the Housing Authorities is the number of low-income units owned or managed during the last fiscal year as reported to the U.S. Department of Housing and Urban Development. The maximum amount charged to any political subdivision shall not exceed \$40,000.00 in a single biennium.

(b) For the biennium beginning July 1, 2005, and subsequent biennia, similar data reflecting expenditures during the previous biennium or in the case of Housing Authorities, the average number of low-income units owned or managed during the previous biennium will be used to calculate the fee charged to each political subdivision.

(c) When insufficient data is available to calculate the average expenditures from the sources listed in (a) of this subsection, the office may either use other sources for the data or estimate the amount of relevant expenditures. In either event, the office shall allow the affected political subdivisions to offer alternative data on which to base its calculation. New political subdivisions will be charged based on the office's estimate of the annual average of relevant expenditures by the entity for the current biennium.

(d) After paying the fee, the political subdivisions may challenge the office about the accuracy of the data used to calculate the fee under (b) of this subsection. Upon verification by the state auditor, the fee may be revised and refund issued or additional fee assessed.

(e) Following the initial billing in each biennium, which will include the total amount due for the biennium beginning July 1, 2003, the office will mail invoices on a quarterly basis one month before the start of each quarter for the outstanding balance at that time. Payments shall be due within thirty calendar days after receipt of the invoice.

(4)(a) The following formula will be used to calculate the fees:

For the annual average of expenditures ranging from \$1m - \$50.99m, a sliding scale as follows: (\$1m - \$10m = \$100; \$11m - \$20m = \$150; \$21m - \$30m = \$200; \$31m - \$40m = \$250; \$41m - \$50m = \$300). For \$51m - \$99.99m, the formula will be the annual average of expenditures multiplied by .0001. At \$100m, a sliding scale resumes; beginning at \$10k and increasing in increments of \$5k for each additional \$100m in the annual average of expenditures; e.g., \$200m - \$299m = \$15k; \$300m - \$399m = \$20,000; etc. Fees will not be charged to any political subdivision with an average annual expenditure

totaling less than \$1m during the period under review.

(b) The fee to Housing Authorities will be \$1 per low-income unit owned or managed during the last fiscal year.

(5) The office shall develop a policy and procedure for collection of any invoice that is not paid within thirty calendar days. The office shall distribute the collection policy and procedure to all political subdivisions along with the initial and quarterly billings.

[Statutory Authority: RCW 39.19.030. WSR 11-11-030, § 326-02-034, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.220. WSR 04-13-032, § 326-02-034, filed 6/9/04, effective 7/10/04. Statutory Authority: RCW 39.19.030(17). WSR 98-13-075, § 326-02-034, filed 6/15/98, effective 7/16/98. Statutory Authority: RCW 39.19.030(7). WSR 97-17-045, § 326-02-034, filed 8/14/97, effective 9/15/97. Statutory Authority: RCW 39.19.220. WSR 94-11-113, § 326-02-034, filed 5/18/94, effective 6/18/94.]

WAC 326-02-040 Prohibited activities with regard to chapter 39.19 RCW. (1) RCW 39.19.080 makes it unlawful for a person, firm, corporation, business, union, or other organization to:

(a) Prevent or interfere with a contractor's or subcontractor's compliance with this chapter, or any rule adopted under this chapter;

(b) Submit false or fraudulent information to the state concerning compliance with this chapter or any such rule;

(c) Fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a minority, women, or socially and economically disadvantaged individual's business enterprise for the purpose of this chapter;

(d) Knowingly make a false statement, whether by affidavit, verified statement, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a minority, women, or socially and economically disadvantaged individual's business enterprise;

(e) Knowingly obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualification of a business entity that has requested certification as a minority, women, or socially and economically disadvantaged individual's business enterprise;

(f) Fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public moneys to which the person is not entitled under this chapter;

(g) Knowingly make false statements that any entity is or is not certified as a minority, women, or socially and economically disadvantaged individual's business enterprise for purposes of obtaining a contract governed by this chapter;

(h) To fail or refuse to comply with any provision of chapter 39.19 RCW or with a contract requirement established under this chapter.

(2) A certified business engages in prohibited activity when it fails to perform a commercially useful function on any public-sector contract or procurement. Failure to perform a commercially useful function occurs when a business:

(a) Functions as a conduit; or

(b) Functions as a pass-through; except brokers and firms operating in industries where such activity is common industry practice, e.g., insurance or real estate.

(3) A business that is deemed to be a switch business is also deemed to have engaged in prohibited activity.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-02-040, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19-030(7). WSR 92-11-007, § 326-02-040, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-22-017 (Order 88-9), § 326-02-040, filed 10/24/88.]

WAC 326-02-045 Factors considered in determining performance of commercially useful function. (1) In determining the performance of a commercially useful function, factors which may be considered include, but are not limited to, the following:

(a) Whether the work to be performed by the business is within the scope of work included in the Standard Industrial Classification code(s) under which the business is listed in the directory of certified businesses published by the office or in the records of the office.

(b) Whether the business could be considered a conduit, front, or pass-through;

(c) Whether the minority and/or woman and/or socially and economically disadvantaged individual owner(s) has the skill and expertise to perform the work for which the business is being or has been certified;

(d) Whether the business is or will be responsible for executing a distinct element of work in the performance of a contract; and the principals or employees of the business actually perform, manage, and supervise the work for which the business is or will be responsible;

(2) In addition, a business that functions as a supplier shall:

(a) Be the manufacturer of the goods or materials or assume the actual and contractual responsibility for furnishing the goods or materials and execute material changes in the configuration of those goods or materials; or

(b) Prior to submitting an application for certification, secure a contract or distributor agreement with a manufacturer to act as an independent authorized representative capable of passing on product warranties to the purchaser.

(3) Factors which may indicate that a supplier is not performing a commercially useful function include, but are not limited to, the following:

(a) A minimum amount of inventory is not maintained.

(b) Billing and shipping arrangements are performed by nonowners or staff of nonowners.

(c) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user.

(d) The firm does not take ownership of the product.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-02-045, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19-030(7). WSR 92-11-007, § 326-02-045, filed 5/11/92, effective 6/11/92.]

WAC 326-02-050 Penalties which may be imposed.

(1) The penalties under this section may be imposed by the office, or by the state agency or educational institution administering a contract or procurement within which a violation occurs. Nothing in chapter 39.19 RCW or this title prevents the state agency or educational institution administering the contract from pursuing any procedures or sanctions as are otherwise provided by statute, rule, or contract provision.

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(2) Penalties which may be imposed include one or more of the following:

(a) Withhold payment until the violation is remedied;

(b) Debarment from contracting with the state for up to one year; debarment for up to three years may be imposed for willful repeated violations, exceeding a single violation;

(c) Suspension of the contract;

(d) Termination of the contract;

(e) Immediate suspension of the certification of a certified firm;

(f) Payment of civil penalties of up to five thousand dollars for each violation or up to ten percent of the amount of the contract; or

(g) Decertification or denial of certification.

(3) Penalties may be imposed on one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons.

(4) Penalties shall be imposed by the office giving a written notice which is either served personally or by certified mail, return receipt requested, to the person or business incurring the penalty. Except for suspension of certification, which is covered by WAC 326-02-090, the notice of the civil penalty shall be a final order of the office unless, within fifteen days after the notice is served, the person incurring the penalty appeals the penalty by filing a notice of appeal with the office.

(5) If a notice of appeal is filed in a timely manner, the office shall conduct a brief adjudicative proceeding as outlined in chapter 326-08 WAC.

[Statutory Authority: RCW 39.19.030. WSR 11-11-030, § 326-02-050, filed 5/11/11, effective 6/11/11; WSR 94-11-117, § 326-02-050, filed 5/18/94, effective 6/18/94. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-050, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-22-017 (Order 88-9), § 326-02-050, filed 10/24/88.]

WAC 326-02-060 Factors considered in determining penalties. In determining the nature of the penalty and monetary amount, if any, of a penalty to be imposed, the factors which may be considered include, but are not limited to:

(1) The potential harm to the certified or noncertified business;

(2) Potential harm to the state, due to delay or other problems;

(3) The potential for harm to the public;

(4) Whether the violation occurs in the context of particular contract;

(5) The stage or percent of completion of a contract at which the violation occurs;

(6) The timing of the discovery of the violation;

(7) The contracting history of the alleged violator;

(8) The extent to which the alleged violator has cooperated with the investigation;

(9) Whether there have been previous violations by the person.

[Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-060, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-22-017 (Order 88-9), § 326-02-060, filed 10/24/88.]

WAC 326-02-070 Suspension of contract. (1) The performance of a contract may be immediately suspended upon receipt of adequate evidence received by the office that the person has engaged in any of the prohibited activities described in WAC 326-02-040 and RCW 39.19.080.

(2) The decision of the office to suspend a contract is discretionary and will not be based on an unsupported allegation. Decisions to suspend shall be in the public interest, including the government's interest in doing business with firms that are responsible and in preserving competition.

[Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-070, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-22-017 (Order 88-9), § 326-02-070, filed 10/24/88.]

WAC 326-02-080 Suspension of certification. The certification of a business may be suspended for engaging in any of the activities prohibited by RCW 39.19.080 and WAC 326-02-040, upon a showing that immediate action is necessary to prevent harm to the public welfare.

[Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-080, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-22-017 (Order 88-9), § 326-02-080, filed 10/24/88.]

WAC 326-02-090 Procedures for suspension, hearing provided. (1) If the director determines that suspension of the certification of a business is necessary to prevent immediate harm to the public welfare, the business will be notified by personal service or certified mail, return receipt requested, of the suspension and the reasons therefor. The suspension shall take effect immediately upon receipt of the notice. The suspended business will be entitled to a hearing pursuant to chapter 326-08 WAC, but a written request for hearing must be made within twenty days of receipt of the notice of suspension.

(2) After the hearing, the presiding officer may recommend that:

- (a) Suspension of certification remain in effect for up to one year;
- (b) The suspension be removed; or
- (c) That the business be decertified.

[Statutory Authority: RCW 39.19.030. WSR 11-11-030, § 326-02-090, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-090, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-22-017 (Order 88-9), § 326-02-090, filed 10/24/88.]