

# Title 326 WAC

## OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

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### Chapter 326-02 WAC GENERAL PROVISIONS

#### WAC

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**WAC 326-02-010 Purpose.** The purpose and intent of chapter 120, Laws of 1983, and of these rules is to provide the maximum practicable opportunity for increased participation by minority and women-owned businesses in participating 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 and women-owned businesses and the entry of new and diversified minority and women-owned businesses into the marketplace. These rules shall be applied and interpreted to promote this purpose. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-02-010, filed 10/28/83.]

**WAC 326-02-020 Applicability.** This chapter applies to all applications for certification as a minority or women's business enterprise by the state of Washington and to all public works and procurement by state agencies and educational institutions: *Provided*, That this chapter 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: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-02-020, filed 10/28/83.]

**WAC 326-02-030 Definitions.** Words and terms used in these rules shall have the same meaning as each has under chapter 120, Laws of 1983, unless otherwise specifically provided in these rules, or the context in which they are used clearly indicates that they be given some other meaning.

(1) "Advisory committee" means the advisory committee on minority and women's business enterprises.

(2) "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.

(3) "Combination minority and women's business enterprise" means a business organized for profit, performing a commercially useful function, which is fifty percent owned and controlled by a minority male and fifty percent owned and controlled by a nonminority woman. Both owners must be United States citizens or lawful permanent residents and cannot be married to each other.

(4) "Commercially useful function" means being responsible for execution of a contract or a distinct element of the work under a contract by actually performing, managing and supervising the work involved.

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

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

(7) "Contractor" means a party who enters into a contract to provide a state agency or educational institution with goods or services, including construction, or a subcontractor or sublessee of such a party.

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

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

(10) "Goals" means annual overall agency goals, expressed as a percentage of dollar volume for participation by minority and women-owned businesses, and shall not be construed as a minimum goal for any particular contract or for any particular geographical area. Goals shall be met on a contract by contract or class of contract basis. In meeting their goals on either a contract by contract or a class of contract basis state agencies and educational institutions should facilitate the entry of minority and women's business enterprises into types of businesses in which MBE's and WBE's are underrepresented.

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

(12) "Joint venture" means an association of two or more persons or businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge and in which they exercise control and share in profits and

losses in proportion to their contribution to the enterprise.

(13) "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 subcontinent, or the Pacific Islands; or

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

Persons who are visibly identifiable as a minority need not provide documentation of their racial heritage but may be required to submit a photograph. Persons who are not visibly identifiable as a minority must provide documentation of their racial heritage which will be determined on a case-by-case basis. The final determination will be in the sole discretion of the office.

(14) "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a business organized for profit, performing a commercially useful function, which is owned and controlled by one or more minority individuals or minority business enterprises certified by this office. Owned and controlled means a business in which one or more minorities or MBE's certified by this office own at least fifty-one percent, or in the case of a corporation at least fifty-one percent of the voting stock, and control at least fifty-one percent of the management and daily business operations of the business.

(15) "MWBE" means a minority-owned business enterprise, a women-owned business enterprise; and/or a combination minority and women's business enterprise certified by the office of minority and women's business enterprises of the state of Washington.

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

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

(18) "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.

(19) "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.

(20) "Women's business enterprise," "women-owned business enterprise," or "WBE" means a business organized for profit, performing a commercially useful function, which is owned and controlled by one or more women or women's business enterprises certified by this office. Owned and controlled means a business in which

one or more women or WBE's certified by this office own at least fifty-one percent or in the case of a corporation at least fifty-one percent of the voting stock, and control at least fifty-one percent of the management and daily business operations of the business. The women owners must be United States citizens or lawful permanent residents. [Statutory Authority: 1983 c 120 § 3(7), 83-22-045 (Order 83-3), § 326-02-030, filed 10/28/83.]

## Chapter 326-20 WAC CERTIFICATION

### WAC

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**WAC 326-20-010 In general.** Any business which meets the definition of a minority business enterprise, a women's business enterprise, or a combination minority and women's business enterprise as set forth in this title is eligible to be certified by the state of Washington as a minority business enterprise, a women's business enterprise or a combination minority and women's business enterprise. A business owned and controlled by one or more minority females may be certified as both a MBE and a WBE. [Statutory Authority: 1983 c 120 § 3(7), 83-22-045 (Order 83-3), § 326-20-010, filed 10/28/83.]

**WAC 326-20-020 Federally funded projects.** Where a federal requirement which is a prescribed condition for allocation of federal funds to the state of Washington sets forth criteria for certification which are in conflict with those in this chapter, a business which meets those federal criteria may be certified as a minority business enterprise or women's business enterprise for state projects funded under those requirements. [Statutory Authority: 1983 c 120 § 3(7), 83-22-045 (Order 83-3), § 326-20-020, filed 10/28/83.]

**WAC 326-20-030 Proof of minority status.** Each minority owner of a business applying for MBE or combination minority and women's business enterprise certification who is visibly identifiable as a minority shall

submit with the MWBE application form a photograph or copy of documentation containing the owner's photograph. Each minority owner who is not visibly identifiable as a minority shall submit a copy of his or her birth certificate, tribal enrollment papers, or other document which shows that the owner meets the definition of "minority" as set forth in these rules. The final determination will be in the sole discretion of the office. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-030, filed 10/28/83.]

**WAC 326-20-040 Proof of woman's status.** Each woman owner of a business applying for certification as a WBE or as a combination minority and women's business enterprise must submit with the MWBE application form a copy of her birth certificate, valid driver's license, or other document which shows that the owner is a woman. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-040, filed 10/28/83.]

**WAC 326-20-050 Proof of ownership of business.** All minority or women owners shall submit to the office proof of their ownership of the requisite percentage of the business at the time the application is submitted. Such proof shall consist of stock certificates, a notarized affidavit of stock ownership from the corporate treasurer, a partnership agreement, cancelled check used to purchase ownership, or other recognized proof of ownership. In cases of sole proprietorships or other cases where documentary proof of ownership is not available, the minority or women owners shall so advise the office, which may undertake further investigation. The office may also require documents showing how and when the minority or women owners' interest in the business was acquired. The office may, for any reason, require any minority or women owners to provide additional proof of, or information concerning, ownership. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-050, filed 10/28/83.]

**WAC 326-20-060 Counting community property.** The fifty-one percent ownership requirement is not met by an owner having only his or her fifty percent interest under community property laws. Except as provided in this section, each minority or woman owner who is a resident of a community property state and who is married must submit a copy of a separate property agreement signed by both spouses showing that the owner's spouse has acknowledged that at least two percent of the owner's interest in the business is held as the owner's separate property. This will not be required in these situations:

- (1) Where a male minority owner of an MBE is married to a minority female.
- (2) Where the fifty-one percent ownership requirement can be satisfied without requiring each owner to file a separate property agreement. Example: If fifty percent of the stock of a corporation is in the name of an unmarried woman and the other fifty percent is in the name of a married woman in a community property

state, the fifty-one percent ownership criteria for WBE certification is satisfied. In this case, fifty percent of the stock is owned by the unmarried woman as her separate property, twenty-five percent of the stock is owned by the married woman as community property, and twenty-five percent of the stock is owned by the married woman's husband as community property. Thus, since seventy-five percent of a stock is owned by women, the married woman does not need a separate property agreement. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-060, filed 10/28/83.]

**WAC 326-20-070 Counting ownership held in trust.** In determining whether the fifty-one percent ownership requirement is met, no stock or ownership held in trust shall be counted, except in the following cases: (1) Where both the trustee and the beneficiary are minorities, or both are women, and the trustee meets the fifty-one percent control requirement; or (2) where the stock or ownership is held in an irrevocable trust for the benefit of a minority or a woman and the minority or woman beneficiary meets the fifty-one percent control requirement. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-070, filed 10/28/83.]

**WAC 326-20-080 Factors considered in determining control.** Whether a minority or woman owner meets the fifty-one percent control requirement is determined on an application-by-application basis. Factors which may be considered in determining whether the minority or woman owner meets the control requirement include, but are not limited to, the following:

- (1) Authority and restrictions as indicated in the articles of incorporation, bylaws, partnership agreements and/or other business agreements and documents;
- (2) The financial interest and/or participation in any other business by any owner or key personnel;
- (3) Past and current employment history of minority and women owners involved in the business;
- (4) Members of the board of directors and corporate officers;
- (5) Experience, training, and expertise of any owners;
- (6) Recent changes in ownership and/or control of the business;
- (7) Financial obligation to and capital contributions from nonowners of the business; and
- (8) Documentation indicating who has ultimate authority to make policy and management decisions and to legally obligate the business. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-080, filed 10/28/83.]

**WAC 326-20-090 Size and length of time in business.** Size of business or length of time in business shall not be considered a prerequisite for certification. However, the office may require that this information be provided in order to determine whether the business qualifies for MWBE status under federal regulations. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-090, filed 10/28/83.]

**WAC 326-20-110 Application form.** The office will develop and make available an application form for certification as a MWBE, which may be modified at any time. The form will solicit enough information to determine whether the applicant is eligible for MWBE certification for state-funded projects and may include supplemental questions necessary to determine whether the applicant is eligible for certification for a specific federally-funded project. As part of its investigation, the office may require minority and women owners to provide information in addition to that requested on the application forms.

Where additional information is required from the applicant business to complete the investigation, the office may request the information by letter and may impose a time limit of not less than seven days in which the applicant must respond. If the applicant fails to provide the information in the time requested, the office may give notice to the applicant of its intention to close the file administratively. The notice shall be by certified letter and shall give the applicant twenty days after the mailing of the letter in which to provide the information requested by the office. If all the requested information is not received by the office within the twenty days, the office may administratively close the file. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-110, filed 10/28/83.]

**WAC 326-20-120 Submittal of forms.** Application forms shall be submitted by mail or in person to the office at the following address:

STATE OF WASHINGTON  
OFFICE OF MINORITY AND WOMEN'S BUSINESS  
ENTERPRISES  
211 - Fifth Avenue West  
MS: FK-11  
Olympia, WA 98504

The minority or woman owner shall be responsible for ensuring that the form is complete and accurate and is properly delivered to the office. The applicant should keep a copy of the completed form and all documents submitted with the form for its reference. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-120, filed 10/28/83.]

**WAC 326-20-130 Processing applications--Time.** The office will process all applications as promptly as its resources permit. The office cannot guarantee that any application will be processed within any certain time period and the inability to process an application by a certain time shall not subject the office or the state to liability. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-130, filed 10/28/83.]

**WAC 326-20-140 Duty to cooperate.** The owners shall have the duty to cooperate fully in the office's investigation of the application, including promptly submitting any additional information requested by the office. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-140, filed 10/28/83.]

**WAC 326-20-150 On-site investigations.** The office may, whenever it deems necessary, conduct an unannounced on-site investigation of an applicant's operations. By submitting the MWBE application form the applicant agrees that the office may conduct such investigations. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-150, filed 10/28/83.]

**WAC 326-20-160 Burden of proof.** The applicant business shall have the burden of proving to the satisfaction of the office that it is eligible for certification. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-160, filed 10/28/83.]

**WAC 326-20-170 Decision.** The office shall notify the applicant business by mail of its decision to grant or deny certification promptly after the decision has been made. The decision shall indicate whether the certification is for the state program, a federal program or both. Where the office has denied the application, the decision shall set forth the bases for denial. Where the office has denied certification because the women or minority owners did not meet the ownership criteria, this shall not preclude the office from denying the application on additional bases following resubmittal or reconsideration. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-170, filed 10/28/83.]

**WAC 326-20-180 Effect of certification.** Certification as a MWBE shall have the following effects:

(1) Certification as a MWBE for the state program shall entitle the MWBE to be counted by state agencies and educational institutions toward meeting their MWBE goals under this chapter. Certification as a MWBE for a federal program shall entitle the MWBE to be counted by state agencies and educational institutions toward meeting the MWBE goals under those programs. Certification shall be effective as of the date the decision is made in writing.

(2) Certification may be revoked at any time the office determines that the MWBE does not meet the current criteria for eligibility for certification. The MWBE shall notify the office of any changes in its ownership, control, or operations which may affect its continued eligibility as a MWBE.

(3) Certification is effective for one year. The office may require of all applicants and/or of selected applicants periodic notarized statements regarding changes in the information provided during the initial certification process. The office will renew the certification annually as long as the applicant continues to meet the eligibility criteria.

(4) Certification as a MWBE does not constitute compliance with any other laws or regulations, including contractor registration or prequalification, and does not relieve any firm of its obligations under other laws or regulations. Certification as a MWBE does not constitute any determination by the office that the firm is responsible or capable of performing any work. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-180, filed 10/28/83.]

**WAC 326-20-190 State MWBE directory.** The office will maintain a directory of certified MWBE's as follows:

(1) The office will maintain a complete directory of all MWBE's certified by the office for state projects and for federally-funded projects.

(2) The office will update and compile the directory into a form suitable for distribution at least semiannually and may issue supplements on a more frequent basis.

(3) The state MWBE directory will be available for purchase from the office at a reasonable cost. One copy will be made available to each state agency and educational institution at no charge. Copies will be provided to the state library.

(4) Bidders and others proposing to enter into contracts with state agencies and educational institutions shall have the responsibility of ensuring that firms proposed to be used by them toward MWBE goals are certified. State agencies and educational institutions contracting directly with a purported MWBE shall have the responsibility of ensuring that the firm is certified.

(5) Information concerning the status of a firm as a MWBE may be obtained by contacting the office during designated working hours. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-190, filed 10/28/83.]

**WAC 326-20-200 Complaints.** Complaints regarding certification of MWBE's may be submitted, and will be processed, according to the following procedures:

(1) Any individual, firm, agency or other person who believes that an applicant certified as a MWBE does not qualify under the standards of eligibility for certification may file a complaint with the office.

(2) The complaint must be submitted to the office, must be in writing, and must set forth facts which indicate that the MWBE is not eligible, along with copies of any supporting documents the complainant may have. Facts should be described in as much detail as possible.

(3) The complainant should sign the complaint and give an address and telephone number where he or she may be reached during the investigation. However, the office will process anonymous complaints which include sufficient facts to indicate that they may have merit.

(4) Complaints, as well as names, addresses, and telephone numbers of complainants, cannot be considered confidential by the office.

(5) The office will investigate each complaint as promptly as resources allow. The MWBE shall cooperate fully in the office's investigation. The office will notify the business of the complaint by certified mail. No MWBE will be decertified based on a complaint without first having an opportunity to respond to the complaint: *Provided*, That failure of the MWBE to respond to the complaint within twenty calendar days of mailing from the office may result in suspension of certification or decertification.

(6) The director may, at his or her discretion, suspend the MWBE's certification pending the outcome of the investigation after providing the MWBE seven calendar

days notice by certified mail to show cause in writing why the suspension of certification should not occur. No suspensions may last more than thirty calendar days.

(7) After the investigation is completed, the office shall issue a written decision either rejecting the complaint or revoking the certification. The written decision shall be mailed to the MWBE involved and to the complainant, if known.

(8) Information received about an applicant prior to the certification decision being made will not be considered a complaint, but will be considered in the investigation of the application for certification. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-200, filed 10/28/83.]

**WAC 326-20-210 Reconsideration of decision.** Decisions to deny certification, deny renewal of certification, or to revoke certification will be reconsidered on the following basis:

(1) When an applicant has been denied certification, or when a MWBE's certification has not been renewed or has been revoked, the applicant may petition the office for reconsideration of the decision on the grounds that the office did not have all relevant information, that the office misapplied its rules, or that the office otherwise made an error.

(2) A petition for reconsideration must be in writing and must be received by the office within thirty calendar days of the mailing of the decision, or the decision becomes administratively final. The petition must set forth the grounds on which the applicant believes the decision is in error, including any additional information which the applicant business has to offer.

(3) Upon receipt of the petition, the office shall review the petition and any additional information, and may conduct further investigation. The office will then notify the applicant by certified mail of its decision either to affirm the denial, the denial of renewal, or revocation of certification or to grant certification.

(4) If a petition for reconsideration is filed, a decision to deny certification following consideration of the petition is administratively final. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-210, filed 10/28/83.]

**WAC 326-20-220 Resubmission of applications.** An applicant which has withdrawn its application or whose application has been denied may file a new application if there has been a substantial change in ownership, control, or organization of the business. However, no business may file more than two applications in any calendar year. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-220, filed 10/28/83.]