

Title 326 WAC

MINORITY AND WOMEN'S BUSINESS ENTERPRISES, OFFICE OF

Chapters

- 326-02 General provisions.
- 326-06 Public records rules and regulations for the office of minority and women's business enterprises.
- 326-08 Hearings procedures.
- 326-20 Certification.
- 326-30 Goal setting rules.
- 326-40 Agency/educational institution operating procedures.
- 326-50 Participation programs.

Chapter 326-02 WAC GENERAL PROVISIONS

WAC

- 326-02-010 Purpose.
- 326-02-020 Applicability.
- 326-02-030 Definitions.
- 326-02-040 Prohibited activities with regard to chapter 39.19 RCW.
- 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 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, that is fifty percent owned and controlled by one or more minority men or MBEs certified by this office and fifty percent owned and controlled by one or more nonminority women or WBEs certified by this office. The owners must be United States citizens or lawful permanent residents.

(4) "Commercially useful function" means the performance of real and actual services in the discharge of any contractual endeavor.

(a) For purposes of certification, factors which may be considered in determining whether a business is or will be performing a commercially useful function include, but are not limited to, the following:

(i) Whether the business is or will be responsible for executing a distinct element of work in the performance of a contract; and

(ii) Whether principals or employees of the business actually perform, manage, and supervise the work for which the business is or will be responsible; and

(iii) Whether the business could be considered a "conduit," "front," or "pass-through" as defined in this section; and

(iv) Whether the minority and/or women owner(s) has the skill and expertise to perform the work for which the business is being, or has been certified.

(b) The manner in which a supplier does business will be examined by the office for purposes of certification and may be considered by state agencies and educational institutions in awarding a contract. Factors in addition to those in (a) of this subsection which indicate that a

supplier is performing a commercially useful function include, but are not limited to, the following:

(i) It either assumes the actual and contractual responsibility for furnishing goods or materials and executes material changes in the configuration of those goods or materials; or

(ii) Is the manufacturer of those goods or materials; or

(iii) Before submitting the certification application, it has secured a contract or distributor agreement with a manufacturer to act as an authorized representative, and can pass on product warranties to the purchaser; and

(iv) Performs a distinct element of work in a manner that is consistent with common industry practice. Factors which may indicate that a firm 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 supplier does not take ownership of the product.

(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 a single enterprise 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.

(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 legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by this office. The minority owners must be United States citizens or lawful permanent residents.

(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 legitimately owned and controlled by one or more women or women's business enterprises certified by this office. The women owners must be United States citizens or lawful permanent residents.

(21) "Common industry practices" mean 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.

(22) "Conduit" means a WBE, MBE, or combination MWBE which agrees to be named as a subcontractor on a contract in which such WBE, MBE, or combination MWBE does not perform the work but, rather, the work is performed by the prime contractor, prime consultant, material supplier, purchasing contractor, or any other non-MWBE business.

(23) "Front" means a business which purports to be: (a) A WBE but is in fact owned or controlled by a man or men; (b) a MBE but is owned or controlled by a nonminority person or persons; or (c) a combination MWBE but is owned or controlled by a man or men or by a nonminority person or persons to a greater extent than is allowed by WAC 326-02-030(3).

(24) "Pass-through" means a business which buys goods from a non-WBE, non-MBE, or noncombination MWBE 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.

(25) "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.

(26) "Supplier" means a business which provides or furnishes goods or materials, performs a commercially useful function, and is not considered a conduit, front, or pass-through.

(27) "Switch business" means a business which was previously owned and controlled by a man, men or nonminorities, 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, but continues to operate in substantially the same manner as it did prior to the written revisions of the business structure.

(28) "Corporate-sponsored dealership" means a bona fide minority or women's business which meets the following standards in lieu of the fifty-one percent ownership criteria set out in subsections (14), (15), and (20) of this section, and meets the following standards in lieu of the factors used to evaluate control in WAC 326-20-080.

(a) The minority or women owner(s) have entered into a written agreement, contract, or arrangement with a national or regional corporation and has been granted a license to offer, sell or distribute goods or services at wholesale or retail, leasing, or otherwise use the name, service mark, trademark, or related characteristics of the sponsoring corporation.

(b) The capital investment for the dealership or business is jointly contributed by the minority or women owner(s) and the sponsoring corporation.

(i) The original investment contributed by the minority or women owner(s) may be less than fifty-one percent, but must constitute at least twenty-five percent of the capitalization investment (total required equity capital) in the dealership corporation.

(ii) A specified time limit of not more than ten years must be established, binding between the minority or women owner(s) and the sponsoring corporation, within which the buy-out of the corporate sponsor's interest is complete.

(c) If the sponsoring corporation retains majority voting rights and control of the board of directors, then the minority or women owner(s) must annually apply at least fifty percent of the net profit and bonuses toward the buy-out of the corporate sponsors' interest within the buy-out time limit established with the corporation.

(d) The minority or women owner(s) must show active participation in the decision-making process on the board of directors of the dealership.

(e) The minority or women owner(s) must have operational control, and as such have day-to-day management control of the dealership, with responsibility for sales, service volume, and profits.

(f) The sponsoring corporation must have specifically developed a national or regional corporate sponsored dealership program to address the present-day issue of lack of opportunities for minorities or women in the dealership industry, which includes such features as: Capitalization assistance from the sponsoring corporation, on-going business operations training, technical assistance to the dealership owner, and a corporate sponsored minority and women's business program.

(g) The minority or women owner(s) must demonstrate that the relationship between the corporate sponsor and the minority or women's business was not formed for the primary purpose of achieving certification under chapter 39.19 RCW, or any similar provision of any ordinance, regulation, rule, or law.

(h) The minority or women owner(s) have prior business or management experience relating to the business being entered into as an owner.

(i) The minority or women owner(s) must be president of any corporation formed by the business.

(29) "Legitimately owned and controlled" for the purposes of determining whether a business is a minority business enterprise, a women's business enterprise, or a combination thereof, shall mean that women, minorities or a combination thereof shall possess:

(a) Ownership of at least fifty-one percent interest in the business, unless the minority and/or women's business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030(28). The ownership shall be real and continuing, and shall go beyond the pro forma ownership of the business reflected in the ownership documents. The minority and/or women owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance and the form of the arrangements; and

(b) Control over management, interest in capital, interest in profit or loss and contributions to capital, equipment and expertise on which the claim of minority and/or women-owned status under this chapter is based. The business must be independent and the minority and/or women owner(s) must possess and exercise the

legal power to direct the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy, finances, and overall operations. If the owners of the business who are not minorities and/or women are disproportionately responsible for the operation of the business, then the business is not controlled by minorities and/or women. The minority and/or women owner(s) must control and manage the day to day operations of the business. The requirements of this shall not apply, if the minority/women's business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030(28).

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

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

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

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

(3) 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 or women's business enterprise for the purpose of this chapter;

(4) 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 or women's business enterprise;

(5) 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 or women's business enterprise;

(6) 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;

(7) Knowingly make false statements that any entity is or is not certified as a minority or women's business enterprise for purposes of obtaining a contract governed by this chapter;

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

[Statutory Authority: Chapter 39.19 RCW, 88-22-017 (Order 88-9), § 326-02-040, filed 10/24/88.]

[Title 326 WAC—p 4]

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 within which a violation occurs. Nothing in chapter 39.19 RCW or this chapter 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.

(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 or up to ten percent of the amount of the contract.

(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 personally served upon or transmitted by certified mail, return receipt requested, to the person or entity 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 received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the office. If a notice of appeal is filed in a timely manner, a contested case hearing shall be conducted on behalf of the office by the office of administrative hearings. The administrative law judge shall issue a proposed decision, with findings of fact and conclusions of law, and a recommendation on the size and nature of the penalty to be imposed, if any. The director may adopt the recommendations of the administrative law judge, or affirm, or reduce the penalty, and shall issue a final order setting forth the civil penalty assessed, if any. The director's order may be appealed to the superior court within thirty days of service of the order. Any penalty imposed under this section is due and payable upon the issuance of the final order by the office, whether or not an appeal to superior court is pursued.

[Statutory Authority: Chapter 39.19 RCW, 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 MWBE or non-MWBE firm;

(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: Chapter 39.19 RCW. 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 the interest in preserving competition.

[Statutory Authority: Chapter 39.19 RCW. 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 certified under chapter 39.19 RCW and these regulations 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: Chapter 39.19 RCW. 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 certification of a firm is necessary to prevent immediate harm to the public welfare, the suspended person or firm 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 person or firm 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 administrative law judge may recommend that:

(a) Suspension of certification remain in effect for up to one year;

(b) The suspension be removed; or

(c) That the firm be decertified.

[Statutory Authority: Chapter 39.19 RCW. 88-22-017 (Order 88-9), § 326-02-090, filed 10/24/88.]

Chapter 326-06 WAC

PUBLIC RECORDS RULES AND REGULATIONS
FOR THE OFFICE OF MINORITY AND WOMEN'S
BUSINESS ENTERPRISES

WAC

326-06-010	Purpose.
326-06-020	Definitions.
326-06-030	Description of office organization.
326-06-040	Operations and procedures.
326-06-050	Public records available.
326-06-060	Public records officer.
326-06-070	Office hours.
326-06-080	Requests for public records.
326-06-090	Copying.
326-06-100	Exemptions.
326-06-110	Review of denials of public records request.
326-06-120	Protection of public records.
326-06-130	Records index.
326-06-140	Communications with the agency.
326-06-160	Request for public record—Form.

WAC 326-06-010 Purpose. The purpose of this chapter shall be to ensure compliance by the office of minority and women's business enterprises with the provisions of chapter 42.17 RCW (Initiative 276), and in particular with sections 25 through 32 of that act, dealing with public records.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-010, filed 4/5/84.]

WAC 326-06-020 Definitions. (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by this agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, symbols, or combination thereof; and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(3) "Agency" means the office of minority and women's business enterprises, and the staff and employees thereof, unless the context clearly indicates otherwise.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-020, filed 4/5/84.]

WAC 326-06-030 Description of office organization. (1) The office is located at 406 South Water, Olympia, Washington 98504.

(2) The office consists of a director, confidential secretary, research analyst, and a number of MWBE administrators.

The office provides the following services: Certification of businesses as MBEs or WBEs, monitoring agency/educational institution compliance with chapter 39.19 RCW and Title 326 WAC, publication of a list of certified vendors, identification of barriers to participation by women-owned minority businesses in state agencies' educational institutions' contracts, and development of a plan insuring provision to qualified minority and

women-owned businesses of the opportunity to participate in state agency and educational institution contracts.

The MWBE administrators review applications for certification and provide information about that process to the public. Should information about the certification process or the status of a particular application be desired, the request should be made to the public records officer at OMWBE. Complaints about a certified business should be made following the procedures outlined in WAC 326-20-200.

[Statutory Authority: Chapter 39.19 RCW. 85-14-101 (Order 85-6), § 326-06-030, filed 7/2/85; 84-09-002 (Order 84-5), § 326-06-030, filed 4/5/84.]

WAC 326-06-040 Operations and procedures. (1) Practice and procedure in and before the agency are governed by the uniform procedure rules, chapter 1-08 WAC. Contested case hearings are governed by chapter 326-08 WAC.

(2) The operations of the agency, including meetings, selection of officers, filling of vacancies, and fiscal matters, are conducted according to the provisions of chapter 39. ___ RCW.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-040, filed 4/5/84.]

WAC 326-06-050 Public records available. All public records of the agency, as defined in WAC 326-06-020, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-050, filed 4/5/84.]

WAC 326-06-060 Public records officer. The agency's public records shall be in charge of the public records officer designated by the director. The public records officer shall be responsible for the following: The implementation of the agency's rules and regulations regarding release of public records, coordinating the staff of the agency in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 42.17 RCW.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-060, filed 4/5/84.]

WAC 326-06-070 Office hours. Public records shall be available for inspection and copying during the customary office hours of the agency. For the purposes of this chapter, the customary office hours shall be from 8 a.m. to noon and from 1 p.m. to 5 p.m., Monday through Friday, excluding legal holidays.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-070, filed 4/5/84.]

WAC 326-06-080 Requests for public records. In accordance with requirements of chapter 42.17 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization,

and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the agency which shall be available at its office. The form shall be presented to the public records officer; or to any member of the agency's staff, if the public records officer is not available, at the office of the agency during customary office hours. The request shall include the following information:

(a) The name, address, and organization represented, if any, of the person requesting the record;

(b) The time of day and calendar date on which the request was made;

(c) The nature of the request;

(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to the agency's current index, an appropriate description of the record requested;

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-080, filed 4/5/84.]

WAC 326-06-090 Copying. No fee shall be charged for the inspection of public records. The agency shall charge a fee of twenty-five cents per page of copy for providing copies of public records and for use of the agency's copy equipment. This charge is the amount necessary to reimburse the agency for its actual costs incident to such copying.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-090, filed 4/5/84.]

WAC 326-06-100 Exemptions. (1) The agency reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 326-06-080 is exempt under the provisions of RCW 42.17.310.

(2) In addition, pursuant to RCW 42.17.260(1), the agency reserves the right to delete identifying details when it makes available or publishes any public record, in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-100, filed 4/5/84.]

WAC 326-06-110 Review of denials of public records request. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the director, who shall immediately consider the matter and either affirm or reverse such denial. The request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the agency has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-110, filed 4/5/84.]

WAC 326-06-120 Protection of public records. (1) No person shall knowingly alter, deface, or destroy public records of the agency.

(2) Original copies of public records of the agency shall not be removed from the offices of the agency.

(3) Care and safekeeping of public records of the agency, furnished pursuant to a request for inspection or copying, shall be the sole responsibility of the requestor.

(4) Records furnished for public inspection or copying shall be returned in good condition and in the same file sequence or organization as when furnished.

(5) Boisterous or otherwise disruptive conduct by those requesting public records of the agency shall not be permitted.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-120, filed 4/5/84.]

WAC 326-06-130 Records index. (1) A chronological index is maintained providing identifying information as to all governmental records issued, adopted, or promulgated after June 30, 1972, which are deemed by the agency to fall within the purview of RCW 42.17.260 and which are not exempted under the provisions of RCW 42.17.310.

(2) The current index promulgated by the agency shall be available to all persons under the same rules and on the same rules and on the same conditions as are applied to public records available for inspection.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-130, filed 4/5/84.]

WAC 326-06-140 Communications with the agency. All communications with the agency including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 42.17 RCW and these rules; requests for copies

of the agency's rules and other matters, shall be addressed as follows: Office of Minority and Women's Business Enterprises, c/o Public Records Officer, 221 W. 5th, Olympia, Washington 98504.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-140, filed 4/5/84.]

WAC 326-06-160 Request for public record--Form.

STATE OF WASHINGTON
OFFICE OF MINORITY AND WOMEN'S BUSINESS
ENTERPRISES
REQUEST FOR PUBLIC RECORD

Date of Request: _____

Requested By: _____

Public Records or Information Requested: _____

Requester Read and Sign:

I understand that I must abide by the Rules and Regulations published by the OMWBE, for the protection of public records, a copy of which I have read and understand.

I understand that I will be charged twenty-five cents per copy for all standard letter size copies I desire and that other size publications are available at cost.

Requester's Signature: _____

Completed by Agency Public Records Officer:

Date of Receipt: _____

Number of Copies: _____

Amount Received: \$ _____

Reason if Agency is Unable to Comply: _____

Public Records Officer Signature: _____

Public records of the agency are provided for inspection and copying subject to the following regulations:

- (1) No person shall knowingly alter, deface, or destroy public records of the agency.
- (2) Original copies of public records of the agency shall not be removed from the offices of the agency.

- (3) Care and safekeeping of public records of the agency, furnished pursuant to a request for inspection or copying, shall be the sole responsibility of the requestor.
- (4) Records furnished for public inspection or copying shall be returned in good condition and in the same file sequence or organization as when furnished.
- (5) Boisterous or otherwise disruptive conduct by those requesting public records of the agency shall not be permitted.

I have read, understand, and will comply with the above-stated regulations.

(Signature and date)

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-06-160, filed 4/5/84.]

Chapter 326-08 WAC HEARINGS PROCEDURES

WAC

326-08-010	Purpose.
326-08-015	Time for appeal.
326-08-020	General procedures rules.
326-08-030	Amendments apply to pending cases.
326-08-040	Who may appear and practice.
326-08-050	Notice of hearing.
326-08-060	Form of pleadings.
326-08-070	Service of papers.
326-08-080	Who may issue subpoenas.
326-08-090	Service of subpoenas.
326-08-095	Burden of proof at a hearing.
326-08-100	Procedures for settlement or disposition without a hearing.
326-08-110	Proposed decision—Preparation and service.
326-08-120	Objections to proposed decision.
326-08-130	Decision.

WAC 326-08-010 Purpose. The purpose of this chapter is to effectuate the intent of chapter 39.19 RCW by providing procedures for contested case hearings to review decisions of OMWBE to deny or to revoke certification or to refuse to renew certification of a business as an MBE or WBE.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-010, filed 4/5/84.]

WAC 326-08-015 Time for appeal. When an applicant has been denied certification, or when a MWBE's certification has not been renewed or has been revoked, the aggrieved party may request a hearing. The request must be made in writing and must be received by the office within thirty calendar days of the receipt of the decision denying certification, denying renewal of certification or revoking certification.

[Statutory Authority: Chapter 39.19 RCW. 85-14-101 (Order 85-6), § 326-08-015, filed 7/2/85.]

WAC 326-08-020 General procedures rules. The provisions of chapter 10-08 WAC, "Uniform procedural

rules for the conduct of contested cases" shall apply to hearings regarding certification by OMWBE.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-020, filed 4/5/84.]

WAC 326-08-030 Amendments apply to pending cases. An amendment to this chapter applies to cases pending at the time of the adoption of the amendment, unless the amendment or rule-making order says that it does not apply to pending cases. An amendment to this chapter does not require that anything already done be redone to comply with the amendment unless the amendment expressly says so.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-030, filed 4/5/84.]

WAC 326-08-040 Who may appear and practice. No person other than the following may appear in a representative capacity governed by this chapter:

(1) Washington lawyer. An attorney at law entitled to practice before the supreme court of the state of Washington.

(2) Other lawyer. An attorney at law entitled to practice before the highest court of record of any other state, if attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by Washington law;

(3) Legal intern. A legal intern licensed to engage in the practice of law in the state of Washington under Admission to Practice Rule 9;

(4) Officer, etc. A bona fide officer, partner, or full-time employee of an association, partnership, or corporation appearing for the association, partnership or corporation.

(5) Former employee of OMWBE. A former employee of OMWBE shall not, at any time after severing his or her employment with the office, appear, except with the written permission of the director as a representative or expert witness on behalf of a petitioner in a matter in which he or she previously took an active part as a representative of the office.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-040, filed 4/5/84.]

WAC 326-08-050 Notice of hearing. When OMWBE receives a request for hearing, a notice of hearing will be issued to all parties and to the office of administrative hearings as provided by RCW 34.04.090.

(1) Time. All parties shall be served with notice not less than twenty days before the hearing.

(2) Contents. The notice shall state the time, place, and nature of the hearing. Further, it shall state the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular statute and rules involved; and a short and plain statement of the matters asserted.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-050, filed 4/5/84.]

WAC 326-08-060 Form of pleadings. Papers may be submitted in any form. OMWBE requests, but does not require, that all papers be typewritten on white paper of letter size (8 1/2" x 11").

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-060, filed 4/5/84.]

WAC 326-08-070 Service of papers. Any paper filed with the administrative law judge shall be served on all parties in the manner described in WAC 10-08-110.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-070, filed 4/5/84.]

WAC 326-08-080 Who may issue subpoenas. Subpoenas may be issued by director of OMWBE, any OMWBE staff member designated by the director, the assigned administrative law judge, or an attorney at law who is the attorney for any party in the contested case as provided in RCW 34.04.105.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-080, filed 4/5/84.]

WAC 326-08-090 Service of subpoenas. Subpoenas may be served in any manner authorized by WAC 10-08-110.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-090, filed 4/5/84.]

WAC 326-08-095 Burden of proof at a hearing. At a hearing held pursuant to WAC 326-08-010, the burden of proof shall be on the applicant to demonstrate why the applicant qualifies for certification under chapter 39.19 RCW and Title 326 WAC. The administrative law judge may consider evidence on the issue of whether OMWBE's decision to deny, revoke, or refuse to renew certification was correct at the time it was made.

[Statutory Authority: Chapter 39.19 RCW. 86-17-018 (Order 86-2), § 326-08-095, filed 8/11/86.]

WAC 326-08-100 Procedures for settlement or disposition without a hearing. With the approval of the administrative law judge, disposition may also be made of any hearing by stipulation, consent order or default. Any person feeling aggrieved by the entry of an order of default may request the director to review the order by using the procedure outlined in WAC 326-08-130. The director will set aside an order of default only upon a showing of good and sufficient cause for such failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such order of default is set aside, all interested parties shall be so notified in writing and the matter restored to the hearing calendar.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-100, filed 4/5/84.]

WAC 326-08-110 Proposed decision--Preparation and service. (1) Preparation. Within a reasonable time after the conclusion of the hearing before an administrative law judge, the administrative law judge shall prepare a proposed order for signature by the director of

OMWBE. The proposed order shall conform to the requirements of WAC 10-08-210.

(2) Service. A copy of the proposed order shall be sent, by certified mail, to all parties.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-110, filed 4/5/84.]

WAC 326-08-120 Objections to proposed decision. Any party may make written objections to the proposed order. Any such objection must be served on the director and all other parties within ten days of service of the proposed order. An objection shall state specifically how the proposed order should be modified.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-120, filed 4/5/84.]

WAC 326-08-130 Decision. The director will issue a written decision no later than thirty days from the date the proposed decision is served on the parties.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-130, filed 4/5/84.]

**Chapter 326-20 WAC
CERTIFICATION**

- WAC 326-20-010 In general.
- 326-20-020 Federally funded projects.
- 326-20-030 Proof of minority status.
- 326-20-040 Proof of woman's status.
- 326-20-050 Proof of ownership of business.
- 326-20-060 Community ownership.
- 326-20-070 Counting ownership held in trust.
- 326-20-080 Factors considered in determining control.
- 326-20-081 Intertwinement.
- 326-20-091 Size standards—Purpose.
- 326-20-092 Small business concern requirement.
- 326-20-093 Definitions.
- 326-20-094 Application of size standard.
- 326-20-095 Determination of firm size.
- 326-20-096 STURAA project size standard.
- 326-20-097 Change in firm size.
- 326-20-098 Applicability of federal regulations.
- 326-20-110 Application process.
- 326-20-115 Signatures of applicant business owners.
- 326-20-120 Submittal of forms.
- 326-20-130 Processing applications—Time.
- 326-20-140 Duty to cooperate.
- 326-20-150 On-site investigations.
- 326-20-160 Burden of proof.
- 326-20-170 Decision.
- 326-20-171 Denial of certification—Show cause review.
- 326-20-172 Decertification of firms.
- 326-20-173 Expiration of certification upon death or disability of owner of certified business.
- 326-20-180 Effect of certification.
- 326-20-185 Recertification.
- 326-20-190 State MWBE directory.
- 326-20-200 Complaints.
- 326-20-220 Resubmission of applications.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 326-20-090 Size and length of time in business. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-090, filed 10/28/83.] Repealed by 88-06-030 (Order 88-2), filed 2/26/88. Statutory Authority: Chapter 39.19 RCW.

326-20-210 Reconsideration of decision. [Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-20-210, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7), 83-22-045 (Order 83-3), § 326-20-210, filed 10/28/83.] Repealed by 85-07-006 (Order 85-2), filed 3/8/85. Statutory Authority: Chapter 39.19 RCW.

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 or corporate-sponsored dealership 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: Chapter 39.19 RCW. 87-18-030 (Order 87-6), § 326-20-010, filed 8/27/87. 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. (1) 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.

(2) 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.

(3) The office may, for any reason, require any minority or women owners to provide additional proof of, or information concerning, ownership. The office may request additional information regarding separate ownership of a business including, but not limited to, a separate property agreement.

(4) Ownership of a corporate-sponsored dealership shall be evaluated by using the standards set out in WAC 326-02-030(28).

[Statutory Authority: Chapter 39.19 RCW. 87-18-030 (Order 87-6), § 326-20-050, filed 8/27/87; 84-09-002 (Order 84-5), § 326-20-050, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7), 83-22-045 (Order 83-3), § 326-20-050, filed 10/28/83.]

WAC 326-20-060 Community ownership. An ownership interest arising in a nonapplicant spouse solely because of the operation of community property laws will not disqualify the applicant spouse from certification. Both spouses must certify that:

(a) Only one spouse participates in the management of the business.

(b) The nonparticipating spouse relinquishes control over his/her community interest in the subject business.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-20-060, filed 4/5/84. 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 control requirement as defined in WAC 326-02-030(29) 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.

(9) Control of a corporate-sponsored dealership will be evaluated using the standards set out in WAC 326-02-030(28).

[Statutory Authority: Chapter 39.19 RCW. 88-12-060 (Order 88-5), § 326-20-080, filed 5/31/88; 87-18-030 (Order 87-6), § 326-20-080, filed 8/27/87. Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-080, filed 10/28/83.]

WAC 326-20-081 Intertwinement. To be eligible for certification, a firm must be independent. Significant intertwinement with a noncertified firm may be grounds for denial or decertification of a firm. The office will determine whether a firm is significantly intertwined with a noncertified firm by looking for factors which include, but are not limited to, the following: (1) Shared ownership, (2) common directors or partners, (3) shared equipment, facilities, resources, or employees, (4) beneficial financial arrangements which indicate less than arms length transactions with a noncertified firm, (5) overdependency on a noncertified firm to obtain and perform work, (6) such an identity of interest exists between the firm seeking certification and a noncertified firm that an affiliation may be presumed, (7) the degree to which financial, equipment, leasing, business and other relationships with noncertified firms vary from normal industry practice.

[Statutory Authority: RCW 39.19.030(7). 89-24-047, § 326-20-081, filed 12/1/89, effective 1/1/90.]

WAC 326-20-091 Size standards--Purpose. The purpose of WAC 326-20-091 through 326-20-098 is to set forth the procedure by which the office will apply maximum size standards which a firm must not exceed to be eligible for certification. The office's determination of whether a firm qualifies as a small business concern shall be, whenever possible, consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. 632, and its implementing regulations. (Authority: RCW 39.19.030 (7)(b)).

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-091, filed 4/18/88.]

(1989 Ed.)

WAC 326-20-092 Small business concern requirement. (1) In addition to meeting the ownership and control requirements of chapter 39.19 RCW and these regulations, in order to be entitled to certification under chapter 39.19 RCW, a firm must qualify as a small business concern as defined in WAC 326-20-093.

(2) A firm which exceeds the small business size limits after certification by the office shall be subject to decertification.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-092, filed 4/18/88.]

WAC 326-20-093 Definitions. (1) Affiliate:

(a) Except as otherwise noted, size determinations shall include the applicant concern and all its domestic and foreign affiliates. Moreover, all affiliates, regardless of whether organized for profit, must be included.

(b) Except as otherwise provided in this section, concerns are affiliates of each other when either directly or indirectly:

(i) One concern controls or has power to control the other, or;

(ii) A third party or parties controls or has the power to control both, or;

(iii) Such an "identity of interest" between or among parties exists so that affiliation may be presumed.

(c) In determining whether affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, common management, common facilities, and contractual relationships: Provided, however, That restraints imposed on a franchise by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his or her effort, commensurate with ownership, and bears the risk of loss or failure.

(2) Annual receipts. In size determinations where the maximum size is set by reference to "annual receipts," size eligibility requires that the concern may not exceed the "annual receipts" in that standard.

(a) For the purpose of determining annual receipts of a concern, "receipts" is defined to include all revenue in whatever form received or accrued from whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. However, the term "receipts" excludes proceeds from sales of capital assets and investments, proceeds from transactions between a concern and its domestic and foreign affiliates, proceeds from payments of notes receivable and accounts receivable, and amounts collected as an agent for another, such as gross bookings on which a commission is earned (in which case only the commission earned would constitute revenue) or such as taxes collected for remittance to a taxing authority.

(b) Period of measurement. "Annual receipts" of a concern which has been in business for three or more

[Title 326 WAC—p 11]

completed fiscal years means the arithmetic annual average revenue of the concern over its last three completed fiscal years (total revenue compiled over the entire three year period would be divided by three).

(c) "Annual receipts" of a concern which has been in business for less than three fiscal years means the arithmetic annual average revenue over the time period the concern has been in business (total revenues compiled over the period the concern has been in business, divided by the number of weeks, including fractions of a week, the concern has been in business, multiplied by fifty-two).

(d) Method of determining annual receipts. Revenue may be taken from the regular books of account of the concern. If the Office so elects or the firm has not kept regular books of account or the Internal Revenue Service has found such records to be inadequate and has reconstructed income of the concern, then revenue as shown on the Federal Income Tax return of the concern may be used in determining annual receipts along with other information the office deems relevant.

(3) Business concerns or concern. A business concern eligible for certification under this chapter is a business entity, including its affiliates, organized for profit, with a place of business located in the United States and which makes a significant contribution to the United States economy through payment of taxes and/or use of American products, materials and/or labor. Such business entity must be legitimately owned and controlled by an individual(s) who is (are) citizens of or lawfully admitted permanent resident aliens in the United States, or by another business entity (or entities) eligible for certification under chapter 39.19 RCW.

(4) Number of employees. In size determinations where the standard is "number of employees" size eligibility requires that the concern may not exceed the number of employees in that standard.

(a) "Number of employees" means that average employment of the concern, including the employees of its domestic and foreign affiliates, based upon employment during each of the pay periods for the preceding completed twelve calendar months.

(b) In computing average employment, part-time and temporary employees are counted as full-time employees for each applicable pay period.

(c) If a concern has not been in business for twelve months, "number of employees" means the average employment of the concern, including its affiliates, during each of the pay periods during which it has been in business.

(5) Small business concern. Except as otherwise provided in WAC 326-20-096, for certain federal projects, a small business concern for purposes of eligibility for certification is a business concern which is independently owned and operated, is not dominant in its field of operations, and which does not exceed the size limitations as set forth in the current table of Standard Industrial Classification (SIC) codes and corresponding industry size standards as adopted by the Small Business Administration Federal Regulations, 13 CFR, Part 121. The

number of employees or amount of annual receipts listed as the size standard for each SIC code indicates the maximum allowed for a firm (including its affiliates) to qualify as a small business concern. SIC size standard tables may be obtained at the following locations:

1. Office of Minority and Women's Business Enterprises
406 South Water, MS: FK-11
Olympia, Washington 98504-4611
(206) 753-9693 or SCAN 234-9693
2. METRO - MWBE/Contract Compliance Programs
821 Second Avenue, 6th Floor,
MS: 63
Seattle, Washington 98104
(206) 684-1337
3. Seattle Human Rights Department
105 Fourteenth Avenue
Seattle, Washington 98122
(206) 625-4384
4. King County Minority/Women's Business Program
Room 400, King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 344-2617
5. Port of Seattle - Contract Compliance Department
P.O. Box 1209
Seattle, Washington 98111
(206) 728-3296
6. City of Spokane - Affirmative Action Department
Fourth Floor, Municipal Building
West 808 Spokane Falls Boulevard
Spokane, Washington 99201-3333
(509) 456-4368

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-093, filed 4/18/88.]

WAC 326-20-094 Application of size standard. (1) The office will determine which SIC code an applicant firm falls under based on information submitted by the firm. The office will prepare conversion tables showing the department of general administration's commodity code designations listed in the MWBE directory and the corresponding SIC codes, and the codes developed by the Construction Specifications Institute with the corresponding SIC codes.

(2) If an applicant's business activities encompass two or more SIC codes, the particular size standard to be applied will be based on the primary industry classification of the applicant concern. In determining what is the primary industry in which an applicant, including its affiliates, is engaged, primary consideration shall be given to the distribution of receipts, employees and costs of doing business among differing industry areas in which a

concern is operating for the most recently completed fiscal year of the concern. Other factors (e.g., patents, contract awards, assets) may be considered.

(3) In the event a firm plans to expand the areas in which it does business, it must notify the office in writing at least thirty calendar days before the effective date of such expansion.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-094, filed 4/18/88.]

WAC 326-20-095 Determination of firm size. (1) At the time of application for certification, and again at each renewal, a firm must demonstrate to the office that it is a small business concern. The office, in turn, will verify that each firm qualifies as a small business concern. In verifying the applicant's size, the office will review the annual financial statements and other relevant information.

(2) The size of the firm, including its affiliates, will be determined as of the time of application for certification, and at the time of each renewal of certification.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-095, filed 4/18/88.]

WAC 326-20-096 STURAA project size standard. For purposes of utilization on projects funded by the Federal Highway Administration or under The Surface Transportation and Urban Relocation Assistance Act of 1987, (P.L. 100-17, or STURAA) the maximum size standard set out in STURAA and 49 CFR Part 23 of \$14 million average annual gross receipts over the preceding three fiscal years, shall apply, even if the size standard would otherwise be set by reference to number of employees. The \$14 million figure is a ceiling and firms are still subject to applicable lower limits on business size as established by the Small Business Administration and these regulations.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-096, filed 4/18/88.]

WAC 326-20-097 Change in firm size. (1) In the event a firm that is certified as a small business concern under this chapter exceeds the size limits, it must notify the office in writing within thirty calendar days of the event or the effective date of the expansion.

(2) If a firm exceeds size limits while performing a contract, the rules set out at WAC 326-30-100(3) will apply.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-097, filed 4/18/88.]

WAC 326-20-098 Applicability of federal regulations. Whenever issues arise regarding whether a firm qualifies as a small business concern which cannot be resolved by reference to these regulations, federal regulations adopted by the Small Business Administration at 13 CFR 121 shall provide guidance to resolve such issues.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-098, filed 4/18/88.]

(1989 Ed.)

WAC 326-20-110 Application process. (1) The office will develop and make available an application form for certification under chapter 39.19 RCW, and WAC 326-20-010 and 326-20-020. The application form 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.

(2) Where additional information is required from the applicant business to complete the investigation, the office may request the information by certified letter and may impose a time limit of not less than 30 days in which the applicant must respond. The letter shall include notice to the applicant that, if the applicant fails to provide the information within the time requested, the file will be closed administratively. If all the requested information is not received by the office within the 30 days, the office may administratively close the file. The applicant will be notified in writing that the file has been administratively closed.

(3) Upon receipt of a written request for extension of the time to respond to the request for additional information, received by OMWBE prior to expiration of the 30-day time period, an extension of time to respond may be granted by the director. A showing of extenuating circumstances may be required, and granting of such request for extension is in the sole discretion of the director.

(4) Administrative closure means that the file is placed in inactive status, and further processing of the application is suspended. An applicant may petition the agency for reopening or reactivation of the application file, by written request to the director. Requests to reopen will be granted in the sole discretion of the agency director. The applicant will be notified in writing of the director's decision to grant or deny the request to reactivate the file. If the request is denied, the applicant may resubmit an application pursuant to WAC 326-20-220. If the file is administratively reopened and processing resumed, the application will be processed as if it had been received on the date the request to reopen the file is granted by the director.

[Statutory Authority: Chapter 39.19 RCW. 86-17-018 (Order 86-2), § 326-20-110, filed 8/11/86. Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-110, filed 10/28/83.]

WAC 326-20-115 Signatures of applicant business owners. An application for certification must be signed under oath by all individuals claiming an ownership interest in the business regardless of the structure of the applicant business. Upon written request, OMWBE may accept the affidavit of a corporate officer or other designated representative, identifying the stockholders or owners by sex and race, and providing such other information as the office may require.

[Title 326 WAC—p 13]

[Statutory Authority: Chapter 39.19 RCW. 85-20-058 (Order 85-9), § 326-20-115, filed 9/26/85.]

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
406 South Water
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: Chapter 39.19 RCW. 85-14-101 (Order 85-6), § 326-20-120, filed 7/2/85. 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. In addition to any other penalties provided by law, the submission of false information to the office in connection with an application for certification or renewal of certification shall be grounds for denial of certification, or decertification.

[Statutory Authority: Chapter 39.19 RCW. 88-22-017 (Order 88-9), § 326-20-140, filed 10/24/88. 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

[Title 326 WAC—p 14]

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.

[Statutory Authority: Chapter 39.19 RCW. 85-07-006 (Order 85-2), § 326-20-170, filed 3/8/85. Statutory Authority: 1983 c 120 § 3(7), 83-22-045 (Order 83-3), § 326-20-170, filed 10/28/83.]

WAC 326-20-171 Denial of certification--Show cause review. (1) If the office has reached the conclusion that an application for certification should be denied, the office shall notify the applicant in writing, by certified mail, of its denial of certification. Within thirty days of receipt of this notification, the applicant must either:

(a) Submit a written request for show cause review by the director or designee, containing the information specified in subsection (2) of this section; or

(b) Submit a written request for a contested case hearing, pursuant to WAC 326-08-015.

(2) A request for show cause review must set forth in detail the reasons the applicant believes the office's decision to deny certification is in error and include any additional information and documentation the applicant has to offer.

(3) When an applicant requests a show cause review, the finality of the denial for appeal purposes is stayed until the show cause review is complete.

(4) Upon receipt of a timely request for a show cause review the office will review any additional information provided by the applicant, and may conduct further investigation, and/or schedule a meeting with the applicant.

(5) The office will notify the applicant by certified mail of its decision either to affirm the denial or to grant certification. This notification is considered final for purposes of WAC 326-08-015.

(6) If a change in business circumstances occurs after the reconsideration period, then the applicant must submit a new application pursuant to WAC 326-20-220, and is not entitled to appeal the denial of the application in question on the basis of the change in business circumstances.

(7) "Reconsideration period," for purposes of this section, shall mean the thirty days after receipt of the denial letter, described in subsection (1) of this section plus any additional time authorized by the director in writing.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-171, filed 4/18/88; 86-17-018 (Order 86-2), § 326-20-171, filed 8/11/86.]

WAC 326-20-172 Decertification of firms. (1) When the office has determined that a certified MWBE no longer meets the certification criteria or the certified MWBE fails to supply additional information requested

by the office in a timely manner, the office will notify the firm in writing of its intent to decertify the firm.

(2) When a certified MWBE notifies the office that it is no longer in business, has sold the business, or no longer wishes to remain certified, or when the certified MWBE fails or refuses to return the renewal of certification form, the office will notify the firm in writing of its decertification. This notification is final for purposes of appeal, WAC 326-08-015.

(3) Upon receipt of an "intent to decertify" letter, the MWBE must either:

(a) Submit a written request for a show cause review by the director which meets the criteria set out in (c) of this subsection; or

(b) Submit a written request for a contested case hearing pursuant to WAC 326-08-018.

(c) The request for show cause review must be received by the office within thirty calendar days of receipt of the notice of intent to decertify the firm. The MWBE's request for a show cause review must set forth the reasons the MWBE believes the office's decision to decertify is in error and must include any additional information and documentation the business has to offer.

(4) If the office has not received a request for a show cause review nor any additional written documentation within thirty days of receipt of the "intent to decertify" letter, the decision to decertify becomes final, with no further rights to contest or appeal the decision.

(5) Upon receipt of the request for a show cause review, the office will review the request and any additional information provided and may conduct further investigation and/or request that the MWBE attend a show cause meeting with the director. The office will thereafter notify the MWBE by certified mail of its decision to either affirm or reverse its intent to decertify the firm. This decertification decision is considered final for purposes of WAC 326-08-015.

(6) If a show cause review is requested and the decision to decertify is affirmed, any aggrieved party may request a contested case hearing pursuant to WAC 326-08-015. The request must be made in writing and must be made within thirty days of receipt of the office's decision affirming the decertification decision.

(7) If the decision to decertify is appealed, the business shall remain certified until:

(a) The time provided by WAC 326-08-015 for appeal of the decision to decertify has expired without action by the MWBE; or

(b) The entry of a final decertification order issued by the director pursuant to WAC 326-08-130.

Decertification shall be effective immediately upon the occurrence of (a) or (b) of this subsection, and will not be stayed pending review by any court.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-172, filed 4/18/88; 86-17-018 (Order 86-2), § 326-20-172, filed 8/11/86.]

WAC 326-20-173 Expiration of certification upon death or disability of owner of certified business. (1) Upon death or commencement of long-term disability of the minority or woman owner of a business certified by

the office, the guardian of the disabled owner, the executor of the owner's estate, or other person shall notify OMWBE in writing within thirty days of the death or documented disability. All notifications of long-term disability shall be documented by a statement from a qualified physician.

(2) "Long-term disability," for purposes of this section, shall mean the permanent inability to work, or inability to control the day-to-day operations of the business for a period of three consecutive months (ninety days or more), including both mental or physical incompetence.

(3) The certification of a firm shall expire thirty days after receipt by the office of a notice of a death or documented disability of the owner of a certified firm. State agencies may continue to count the firm towards goal attainment only for those contracts awarded prior to the date of death or onset of disability. Upon expiration of certification, the office shall notify the firm that it has been decertified. The decertification decision will be considered final for purposes of WAC 326-08-015.

(4) The office shall be notified of any transfer of ownership or substantial ownership interest which occurs within the six months following the death or onset of disability. The office may require the new owners to provide additional information, including requiring submission of a new application form. If transfer of ownership or substantial ownership interest occurring within six months of the date of death or date of documented disability results in majority ownership or control by nonfemales or nonminorities, where applicable, the firm shall be decertified by the office.

[Statutory Authority: Chapter 39.19 RCW. 88-22-017 (Order 88-9), § 326-20-173, filed 10/24/88.]

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

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

(2) A firm may be decertified 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 in writing within thirty calendar days of any changes in its size, ownership, control, or operations which may affect its continued eligibility as a MWBE. The duty of a business to cooperate with OMWBE investigation and the consent of a business to on-site investigation by OMWBE created in WAC 326-20-140 and 326-20-150 shall continue after a business is certified by OMWBE.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-180, filed 4/18/88; 84-09-002 (Order 84-5), § 326-20-

180, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-180, filed 10/28/83.]

WAC 326-20-185 Recertification. (1) Certification is effective for two years. The office will require of all certified firms and/or of selected certified firms annual notarized statements regarding changes in the information provided during the initial certification process. The office will generally renew the certification as long as the firm continues to meet the eligibility criteria, and there have been no determinations that the firm has violated chapter 39.19 RCW or this chapter. Debarment of a firm from contracting with one or more state or federal agencies or local government jurisdictions may be grounds for nonrenewal of certification.

(2) Each certified firm must submit a statement of present status prior to expiration of its two-year certification. The statement form will be provided to the certified business sixty days before expiration of its certification. Failure to return the completed form within thirty days may lead to decertification.

(3) 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: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-185, filed 4/18/88; 85-07-006 (Order 85-2), § 326-20-185, filed 3/8/85.]

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 annually and may issue supplements on a more frequent basis. The office will include in the supplements a list of those MWBEs removed from the list of certified firms at the conclusion of the administrative hearing process.

(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: Chapter 39.19 RCW. 85-07-006 (Order 85-2), § 326-20-190, filed 3/8/85. 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 326-20-220 Resubmission of applications. (1) 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.

(2) An applicant which has experienced a substantial change in ownership, control, or organization of the business after the reconsideration period shall not be entitled to certification based on such changed circumstances, and must file a new application.

(3) "Reconsideration period," for purposes of this section, shall mean the 30 days after receipt of the denial letter, described in WAC 326-20-175(1), or the date of the show cause meeting if requested pursuant to WAC 326-20-175(1), plus any additional time authorized in writing by the director.

[Statutory Authority: Chapter 39.19 RCW. 86-17-018 (Order 86-2), § 326-20-220, filed 8/11/86. Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-220, filed 10/28/83.]

Chapter 326-30 WAC GOAL SETTING RULES

WAC

326-30-010	Purpose.
326-30-020	Scope.
326-30-030	Procedure for setting overall annual goals.
326-30-035	Goals for 1983-84.
326-30-036	Goals for 1984-85.
326-30-037	Goals for 1985-86.
326-30-038	Goals for 1986-87.
326-30-039	Goals for 1987-88.
326-30-03901	Goals for 1988-1989.
326-30-040	Agency/educational institution responsibilities.
326-30-050	Contents of agency/educational institution plan.
326-30-060	General exclusions from the contracting base.
326-30-070	Extraordinary exclusions from the contracting base.
326-30-080	Substitutions in contracts requiring MWBE participation.
326-30-090	Timely certification.
326-30-100	Agency/educational institution reporting of MWBE participation.
326-30-110	OMWBE monitoring of compliance.

WAC 326-30-010 Purpose. The purpose of chapter 120, Laws of 1983 and of this chapter is to provide the maximum practicable opportunity for increased participation by minority and women-owned businesses in public works contracts and in contracts for the procurement of goods and services from the private sector for state agencies and educational institutions. These rules set forth the procedures by which the overall annual goals for participation by minority and women-owned business enterprises are set and reviewed; the procedures each state agency and educational institution is to follow in attempting to achieve the goals and to report their performance; and the procedures to be used by the office of minority and women's business enterprises in monitoring compliance.

[Statutory Authority: 1983 c 120. 84-03-005 (Order 83-7), § 326-30-010, filed 1/5/84.]

WAC 326-30-020 Scope. This chapter applies to all public works, personal service contracts, and procurement from the private sector of goods and services by state agencies and educational institutions. These rules do not pertain to agency/educational institution expenditures other than contracts for public works, personal service contracts, and for the procurement of goods and services for the agency/educational institution such as: Amortization; debt service; depreciation; employee benefits including but not limited to mileage, per diem, relocation expenses, and salaries; per diem for prospective state employees, members of institutions' boards and

agencies' commissions; postage; relocation expenses for prospective employees; and transfers of charges.

[Statutory Authority: 1983 c 120. 84-03-005 (Order 83-7), § 326-30-020, filed 1/5/84.]

WAC 326-30-030 Procedure for setting overall annual goals. The director of the office of minority and women's business enterprises will establish overall annual goals for participation in state contracts by qualified MBEs and WBEs for all state agencies and educational institutions. The annual period shall be the state fiscal year. The goals will be a percentage of the reporting base, all contracts awarded each year for public works, personal services, and for procurement of goods and services by state agencies and educational institutions that are not specifically excluded or generally excluded from the reporting base.

(1) Time for establishment of goals. The overall annual goals will be adopted each year by June 15.

(2) Distribution. The overall annual goals will be distributed to the head of each agency and educational institution on or before June 30 each year.

(3) Process used to establish goals. The director will review the overall annual goals each year and establish goals for the upcoming year. Factors to be considered in establishing the new goals shall include: The number of certified minority and women's businesses, the success in attaining goals over the last year, the population of women and minorities in the state, and such other relevant information as may be available.

[Statutory Authority: 1983 c 120. 84-03-005 (Order 83-7), § 326-30-030, filed 1/5/84.]

WAC 326-30-035 Goals for 1983-84. The annual overall goals of each state agency and educational institution for the period from September 1, 1983, through June 30, 1984, shall be 9.1 percent MBE and 3.0 percent WBE participation, based on the agency's or educational institution's total contracts subject to this chapter, less excluded contracts.

[Statutory Authority: 1983 c 120. 84-03-005 (Order 83-7), § 326-30-035, filed 1/5/84.]

WAC 326-30-036 Goals for 1984-85. The annual overall goals for each state agency and educational institution for the period July 1, 1984 through June 30, 1985, shall be 9.1 percent MBE and 3.0 percent WBE participation, based on the agency's or educational institutions' total contracts subject to this chapter, less excluded contracts.

[Statutory Authority: Chapter 39.19 RCW. 84-17-049 (Order 84-7), § 326-30-036, filed 8/13/84.]

WAC 326-30-037 Goals for 1985-86. The annual overall goals for each state agency and educational institution for the period July 1, 1985 through June 30, 1986, shall be 10.1 percent MBE and 6.0 percent WBE participation, based on the agency's or educational institutions' total contracts subject to this chapter, less excluded contracts.

[Statutory Authority: Chapter 39.19 RCW. 85-20-058 (Order 85-9), § 326-30-037, filed 9/26/85.]

WAC 326-30-038 Goals for 1986-87. The annual overall goals for each state agency and educational institution for each of the following classes of contracts for the period July 1, 1986 through June 30, 1987, shall be:

Construction/Public Works	10% MBE	6% WBE
Architect/Engineering	10% MBE	6% WBE
Purchased Goods and Services	8% MBE	4% WBE
Other Consultants	10% MBE	4% WBE

These MWBE participation goals are based on the state agency's or educational institution's total contracts subject to this chapter within each of the above noted classes of contracts, less excluded contracts.

[Statutory Authority: Chapter 39.19 RCW. 86-17-018 (Order 86-2), § 326-30-038, filed 8/11/86.]

WAC 326-30-039 Goals for 1987-88. The annual overall goals for each state agency and educational institution for each of the following classes of contracts for the period July 1, 1987 through June 30, 1988, shall be:

Construction/Public Works	10% MBE	6% WBE
Architect/Engineering	10% MBE	6% WBE
Purchased Goods and Services	8% MBE	4% WBE
Other Consultants	10% MBE	4% WBE

These MWBE participation goals are based on the state agency's or educational institution's total contracts subject to this chapter within each of the above noted classes of contracts, less excluded contracts.

[Statutory Authority: Chapter 39.19 RCW. 87-18-029 (Order 87-5), § 326-30-039, filed 8/27/87.]

WAC 326-30-03901 Goals for 1988-1989. The annual overall goals for each state agency and educational institution for each of the following classes of contracts for the period July 1, 1988 through June 30, 1989, should be:

Construction/Public Works	10% MBE	6% WBE
Architect/Engineering	10% MBE	6% WBE
Purchased Goods and Services	18% MBE	4% WBE
Other Consultants	10% MBE	4% WBE

These MWBE participation goals are based on the state agency's or educational institution's total contracts subject to this chapter within each of the above noted classes of contracts, less excluded contracts.

[Statutory Authority: Chapter 39.19 RCW. 88-17-045 (Order 88-8), § 326-30-03901, filed 8/16/88.]

WAC 326-30-040 Agency/educational institution responsibilities. Each agency and educational institution shall be required to perform certain tasks each year.

(1) Formulate a plan for achieving annual overall goals. Each agency and educational institution shall formulate a plan for achieving the overall annual goals. The plan must be filed with OMWBE by July 30 each year.

[Title 326 WAC—p 18]

(2) The agency's/educational institution's plans are forecasting devices designed to identify areas of opportunity for MWBE participation.

(3) Report contracting activity. Each agency shall file reports on a quarterly basis detailing the monetary value of contracts awarded and the amount of money disbursed and the percentage awarded and paid MBEs and WBEs. The reports shall be in the form prescribed and as described in this chapter.

[Statutory Authority: 1983 c 120. 84-03-005 (Order 83-7), § 326-30-040, filed 1/5/84.]

WAC 326-30-050 Contents of agency/educational institution plan. The annual implementation plan prepared by each agency/educational institution shall include:

(1) An affirmation that the agency/educational institution is committed to use MWBEs to the maximum extent possible;

(2) The method the agency/educational institution will use to encourage MWBE participation in the public works, personal service contracts, and procurement contracting process;

(3) The method the agency/educational institution will use to achieve the overall annual goals. The agency/educational institution should:

(a) Identify the exclusions from the contracting base (described in this chapter) the agency/educational institution intends to use;

(b) Forecast the contracts to be awarded by the agency/educational institution including estimates of the probable monetary value involved; the number and type of contracts to be awarded; and the expected solicitation dates;

(c) Identify possible requests for extraordinary exclusion from the contracting base of contracts or classes of contracts;

(d) Identify the source and amount of funds to be received for transfer to other governmental entities;

(e) Identify expenditures to be made on multi-year contracts awarded in previous years;

(f) State the anticipated participation requirements of MBEs and WBEs in each contract or class of contract;

(g) State the method by which records of MBE and WBE participation in the contracting records will be kept; and

(h) Describe the method the agency/educational institution will use to require compliance by bidders for its contracts with the applicable MWBE participation requirements.

[Statutory Authority: 1983 c 120. 84-03-005 (Order 83-7), § 326-30-050, filed 1/5/84.]

WAC 326-30-060 General exclusions from the contracting base. Certain exclusions from the reporting base against which achievement of the annual overall goals is computed will be allowed without requesting permission from OMWBE.

(1) Exclusions will be reviewed by OMWBE on an annual basis.

(2) Contracts solely for the purchase of the following items are allowable exclusions:

- (a) Convention fees,
- (b) Emergency purchases, those made in response to unforeseen circumstances beyond the control of an agency/educational institution which presents a real, immediate and extreme threat to the proper performance of essential functions and/or which may be reasonably expected to result in excessive loss or damage to property, bodily injury, or loss of life,
- (c) Copyrighted materials,
- (d) Personal service contracts for consultant services in preparation for litigation and expert witness fees,
- (e) Purchases from other governmental agencies, including from cities and counties,
- (f) Honorariums,
- (g) Interagency purchases,
- (h) Interagency reimbursements,
- (i) Membership dues,
- (j) Purchases from nonprofit and not-for-profit firms,
- (k) Purchases for resale,
- (l) Purchases from quasi-governmental agencies, e.g., utilities,
- (m) Purchases from sheltered workshops,
- (n) Purchases from sole source suppliers, those which can be obtained from only one vendor and can be documented as such,
- (o) Subscriptions,
- (p) Contracts which are not competitively awarded and which are awarded to all qualified applicants, e.g., physicians and day care providers, and
- (q) Payments for travel made directly to a common carrier, not through a travel agency, whether by an agency/educational institution, or the employee.

[Statutory Authority: Chapter 39.19 RCW. 88-17-045 (Order 88-8), § 326-30-060, filed 8/16/88. Statutory Authority: 1983 c 120. 84-03-005 (Order 83-7), § 326-30-060, filed 1/5/84.]

WAC 326-30-070 Extraordinary exclusions from the contracting base. (1) Additional areas may warrant consideration by the office as exclusions from the contracting base. In those cases, the agency/educational institution may contact the director of OMWBE in writing and request an exclusion. The request must include justification for the exclusion.

(2) The decision of the director will be in writing. The director may, in his or her sole discretion, grant or deny the exclusion.

(3) A written decision will be made by the director within thirty days of receipt of the request by OMWBE.

(4) Exclusions granted pursuant to this section apply only to the contract or class of contracts specified in the request.

[Statutory Authority: 1983 c 120. 84-03-005 (Order 83-7), § 326-30-070, filed 1/5/84.]

WAC 326-30-080 Substitutions in contracts requiring MWBE participation. (1) MWBE prime contractor substitution.

- (a) Prior to award of the contract:

Where an MBE or WBE that is the apparent low bidder is decertified or indicates it is unable or unwilling to perform the contract prior to the award of the contract, the state agency or educational institution may follow its usual procedures for awarding to the next apparent low bidder, or rebid.

(b) After award of the contract to MWBE prime contractor but prior to the start of the work:

Where an MBE or WBE is decertified or indicates that it is unable or unwilling to perform the work after award of the contract, the agency or educational institution may follow its usual procedures for awarding to the next apparent low bidder, require the contractor to meet goals by obtaining certified subcontractors, or rebid. The agency or educational institution, may, in its discretion, determine whether an increase in the amount of the contract will be allowed based on the substitution.

(c) After start of work by MWBE prime contractor but prior to completion:

Where an MBE or WBE is decertified after commencing the work and the agency or educational institution determines that substitution is impractical, the decertified contractor may continue to perform the work, but only that percentage of the work performed by the MBE or WBE before the decertification may be counted towards the annual, overall goal attainment of the agency or educational institution.

Where an MBE or WBE prime contractor is unable or unwilling to complete the work, the agency or educational institution shall follow its usual procedures to seek performance of the contract, including the imposition of penalties or sanctions authorized by the contract and may pursue all other remedies allowed by law. Only the percentage of the work performed by the MBE or WBE before termination may be counted towards the annual, overall goal attainment of the agency or educational institution.

(2) MWBE subcontractor substitution.

(a) Prior to award of the contract:

Where an MBE or WBE selected as a subcontractor to meet the bid specifications is decertified or indicates it is unable or unwilling to perform the work, the agency or educational institution may require the contractor to substitute another certified MBE or WBE, respectively, to meet the contract specifications. The substituted firm may perform the same or a different part of the work as the original MBE or WBE.

(b) After award of the contract but prior to start of work by the general contractor:

After award of the contract but before commencement of the work, where an MBE or WBE selected as a subcontractor to meet the bid specifications is decertified or indicates it is unable or unwilling to perform the work, the agency or educational institution may require the contractor to substitute another certified MBE or WBE to meet the contract specifications as stated in the original bid. The substituted firm may perform the same or a different part of the work as the original MBE or WBE. The agency or educational institution, may, in its discretion, determine whether an increase in the amount of the contract will be allowed based on the substitution.

(c) After start of the work by the general contractor but prior to completion:

Where an MBE or WBE selected as a subcontractor to meet the bid specifications is decertified or indicates it is unable or unwilling to complete the work after the work has been started by the general contractor, and the agency or educational institution determines it to be impractical to substitute another MBE or WBE to perform that work or any other portion of the work at that point, then the contractor shall not be required to substitute. The percentage of work performed by the MBE or WBE before decertification or termination of the contract may be counted towards the annual, overall goal attainment of the agency or educational institution.

(3) Notice of substitution in quarterly report.

The agency or educational institution shall include in its quarterly report a section that identifies each substitution made during the quarter.

(4) Remedies.

In the event of default by a bidder or contractor, the educational institutions and agencies retain the right to pursue appropriate legal remedies. Nothing herein shall be construed to give any business the right to unilaterally withdraw its bid or terminate the contract.

[Statutory Authority: 1983 c 120. 84-03-005 (Order 83-7), § 326-30-080, filed 1/5/84.]

WAC 326-30-090 Timely certification. Only businesses certified at the time of the submission of bids or proposals, or at the time the contract is awarded if competitive bidding is not utilized, may be counted toward the agency's or educational institution's attainment of the overall annual goals and as meeting the MBE or WBE participation requirement for a particular contract or class of contracts. Until September 1, 1984, a business will be considered certified if (1) the business is certified by OMWBE; (2) the business was certified by the Washington state department of transportation prior to July 1, 1983; (3) the business was certified by the Washington state department of transportation after July 1, 1983, but the certification application was received by the department before July 1, 1983; (4) the business was certified by the city of Seattle before July 1, 1983; or (5) the business was certified by the city of Seattle after July 1, 1983, but the certification application was received by the city prior to July 1, 1983. However, OMWBE may refuse to include in the directory of certified businesses or may remove from the directory those businesses certified by the city of Seattle or the Washington state department of transportation which the office has reason to believe may not be in fact owned and controlled by minorities or women, until the office has had time to investigate or to certify those businesses.

[Statutory Authority: 1983 c 120. 84-03-005 (Order 83-7), § 326-30-090, filed 1/5/84.]

WAC 326-30-100 Agency/educational institution reporting of MWBE participation. (1) Form. Each state

[Title 326 WAC—p 20]

agency and educational institution shall report the participation of MBEs and WBEs in the public works, personal service, and procurement contracts executed by the agency or educational institution. The reports shall be made on a quarterly basis and an annual basis. The reports should designate contracts individually or by class according to the agency's designation in its annual plan. The reports shall also describe the agency's or educational institution's monitoring activity pursuant to sections 8 and 9, chapter 120, Laws of 1983.

(2) **When participation should be reported.** Participation by MBEs and WBEs in procurement of goods, services, and personal services shall be reported when money is disbursed. Participation by MBEs and WBEs in public works contracts should be reported both when the contract is awarded and when the money is disbursed.

(a) For contracts for procurement of goods, services, and personal services, the disbursement should be reported for the quarter in which it is made.

(b) For public works contracts, MBE and WBE participation shall be first reported by the agency or educational institution for the quarter that the contract is awarded. Reports on actual payments to MBEs and WBEs on a contract shall be accompanied by affidavits of payment to MBEs and/or WBEs executed by the prime contractors for those contracts. Where the performance under a contract extends beyond the fiscal year in which it is awarded, all payments made on the contract will be counted toward the agency's or educational institution's annual overall goal attainment for the year in which the payments are made. Where a contract is awarded to an approved joint venture, an affidavit of the actual disbursement of the funds to the joint venturers, signed by all of the joint venturers, shall accompany the report of disbursement.

(3) **Counting MWBE participation toward meeting goals.**

(a) Award to MBE or WBE. When a contract is awarded, in its entirety, to an MBE or WBE, one hundred percent of the payments on the contract can be counted toward annual, overall goal attainment in the category in which the prime belongs.

(b) Award to MBE or WBE prime contractor with non-MWBE subcontractor. When a contract is awarded to an MBE or WBE prime contractor with a non-MWBE subcontractor, one hundred percent of the total contract value can be counted toward annual, overall goal attainment.

(c) Award to non-MWBE prime contractor with MWBE subcontractor. When only a part of the contract is performed by an MBE or WBE, subcontractor, the dollar value of only that percentage of the total contract performed by the MBE or WBE can be counted toward annual, overall goal attainment.

(d) Award to MBE prime contractor with WBE subcontractor. When a contract is awarded to an MBE prime contractor with a WBE subcontractor, the dollar value of the percentage of the total contract performed by the WBE can be counted toward the agency's/educational institution's WBE goal attainment. The dollar

(1989 Ed.)

value of the remainder of the contract can be counted toward attainment of the MBE goal.

(e) Award to WBE prime contractor with MBE subcontractor. When a contract is awarded to a WBE prime contractor with a MBE subcontractor, the dollar value of the percentage of the total contract performed by the MBE can be counted toward the agency's/educational institution's MBE goal attainment. The dollar value of the remainder of the contract can be counted toward attainment of the WBE goal.

(f) Joint venture. Where a contract is awarded to a joint venture that includes an MWBE that is responsible for performance of a clearly defined portion of the work, the dollar value, on a percentage basis, of the MWBE's portion of the work may be counted toward annual, overall goal attainment.

(g) Combination MWBE. Contracts performed totally by a combination MWBE, or partially by a combination MWBE shall be counted by dividing the total dollar value of the contract or portion of contract performed by the combination MWBE by two. One-half of the dollar value will be counted toward the agency's/educational institution's attainment of the MBE goal and one-half will be counted toward the agency's/educational institution's attainment of the WBE goal when the contract contains both MBE and WBE requirements. When the contract contains only an MBE requirement or a WBE requirement, only one-half of the dollar value of the combination MWBE's participation shall be counted toward the agency's/educational institution's attainment of the goal.

(h) Counting participation by a minority WBE. The agency/institution must count participation by a minority female in only the category she designated in her bid. Her participation cannot be counted toward attainment of both overall annual goals.

(i) Substitution of MWBEs. When an MBE or WBE which has been awarded a contract is decertified after award or indicates after award that it is unable or unwilling to perform the contract, the agency/institution may not count the MWBE participation toward its overall annual goal attainment.

Where an MBE or WBE is decertified after it has begun to perform the work and the agency/institution determines substitution is impractical, only the percentage of the work performed by an MBE or WBE before the decertification can be counted toward the annual, overall goal attainment of the agency/institution.

Where a certified MBE or WBE is substituted for a decertified business or a business that indicates it is unwilling or unable to perform the work, the dollar value of the work performed by the certified business can be counted toward the agency/educational institution's goal attainment in that category.

(4) Counting contract awards. MWBE participation shall be counted toward meeting goals in accordance with the following criteria:

(a) Where only one state agency/educational institution is involved in setting goals and in the award of the contract, the total dollar value of the contract awarded to or that portion of the work performed by minority

and women's business enterprises is counted toward the agency's/educational institution's applicable MBE/WBE goals.

(b) Where a contract is awarded by a state agency/educational institution acting as an agent for another state agency/educational institution, the goals set by the agent and the total dollar value of the contract awarded to or that portion of the contract work performed by minority and women's business enterprises is counted toward the agent's applicable MBE/WBE goals. This includes contracts awarded by agents in areas usually included under the agency's/educational institution's delegated authorities. Where agents set and count goals, the total dollar value of the contract is excluded from the requesting agency's/educational institution's contracting base.

[Statutory Authority: Chapter 39.19 RCW. 84-17-049 (Order 84-7), § 326-30-100, filed 8/13/84; 84-09-002 (Order 84-5), § 326-30-100, filed 4/5/84; 84-06-017 (Order 84-4), § 326-30-100, filed 2/29/84. Statutory Authority: 1983 c 120. 84-03-005 (Order 83-7), § 326-30-100, filed 1/5/84.]

WAC 326-30-110 OMWBE monitoring of compliance. OMWBE will independently monitor the participation of MWBEs in the contracts let by each state agency and educational institution.

The office will issue a report annually on the MWBE participation achieved by each agency and educational institution. The report will include the percentage of the dollar value of the contracts awarded in the reporting year that was paid to MBEs and WBEs. The report will be provided to the governor and the legislature as a part of the annual progress and economic impact report.

[Statutory Authority: 1983 c 120. 84-03-005 (Order 83-7), § 326-30-110, filed 1/5/84.]

Chapter 326-40 WAC

AGENCY/EDUCATIONAL INSTITUTION OPERATING PROCEDURES

WAC

326-40-010

Criteria for bid specifications—Monetary value.

326-40-020

Criteria for bid specifications—Averaging MWBE participation.

326-40-100

Joint venture approval.

WAC 326-40-010 Criteria for bid specifications—Monetary value. Where a contract for the purpose of goods or services is to be awarded on the basis of competitive bidding and includes goals for MBE and WBE participation, the award shall not be made on the basis of the vendor's level of MWBE participation unless the contract price is within the lower of 5% or \$5,000.00 of the lowest otherwise responsive bid (determined without regard to MWBE participation).

[Statutory Authority: Chapter 39.19 RCW. 84-05-054 (Order 84-3), § 326-40-010, filed 2/22/84.]

WAC 326-40-020 Criteria for bid specifications—Averaging MWBE participation. Where a contract for the purpose of goods and services is to be awarded on

the basis of competitive bidding, and includes goals for MBE and WBE participation, and no bidder whose bid is within the range established under WAC 326-40-010 meets the goals established for such contract, the agency shall treat as responsive any bid which is in all other respects responsive and is within the range established under WAC 326-40-010, and includes MBE and WBE participation equal to or greater than the average participation included in all competitive bids. Competitive bids shall include all otherwise responsive bids which are within 25% of the lowest otherwise responsive bid. Where no bid meets the criteria established above, an award may be made to the lowest otherwise responsive bidder who does not meet the MBE and/or WBE requirements.

[Statutory Authority: Chapter 39.19 RCW, 85-07-006 (Order 85-2), § 326-40-020, filed 3/8/85; 84-05-054 (Order 84-3), § 326-40-020, filed 2/22/84.]

WAC 326-40-100 Joint venture approval. Money spent on contracts awarded to joint ventures can be counted toward goal attainment by agencies and educational institutions when the procedure outlined in this rule is followed.

(a) Contents of joint venture agreement. The joint venture agreement must be in writing and signed under penalty of perjury by all of the joint venturers. Each joint venture agreement shall specify the capital contribution made by each joint venturer; the control each will exercise; and the distribution of profit and loss. Each of these elements must be allocated in proportion to their contribution. The joint venture agreement must also identify the commercially useful function the joint venture will perform and the part of the work each joint venturer will do. The agreement must also specify which participant(s) are MBEs and which are WBEs and give documentations of MWBE certification.

(b) Requests for approval. Any joint venture may request approval by any state agency or educational institution. The request must be in writing, must include a written joint venture agreement and must contain a statement that gives the approving agency/educational institution authority to audit the joint venture. The agreement shall conform to the requirements of subsection (a) of this section. An agency/educational institution shall approve a joint venture which submits an agreement that contains each of these specified elements.

(c) Time of request. A request for approval of a joint venture must be submitted and approved before the time fixed for bid opening for contracts that are both competitively and noncompetitively awarded contracts. If the joint venture is not approved, the agency shall award to the lowest responsive bidder or rebid.

(d) Effect of approval. An approved joint venture is approved only for one specific contract. Disbursement of funds to an approved joint venture shall be counted toward goal attainment as described in WAC 326-30-100 (3)(f).

(e) Investigation. The agency or educational institution may request additional information from an enterprise seeking approval as a joint venture. Failure to provide the requested information shall result in the denial of the requested approval.

(f) Complaints. Complaints regarding the composition or validity of an approved joint venture shall be written and shall be made to the approving agency or educational institution and to OMWBE. The agency or educational institution shall fully investigate each complaint and issue a written report of its findings. The report will be provided to the complainant and to OMWBE. Concurrently, the office may investigate complaints pursuant to its rules and chapter 39.19 RCW.

[Statutory Authority: Chapter 39.19 RCW, 84-09-002 (Order 84-5), § 326-40-100, filed 4/5/84.]

Chapter 326-50 WAC PARTICIPATION PROGRAMS

WAC	
326-50-010	Participation programs, purpose and intent.
326-50-020	Definitions.
326-50-030	Business partnership program—Purchased goods and services, architecture, engineering and other consultants—Purpose and intent.
326-50-040	Implementation of business partnership program.
326-50-050	Utilization of credits in business partnership account.
326-50-060	Default by either party to the agreement of intent.

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

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. 85-24-010 (Order 85-10), § 326-50-060, 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