Chapter 326-40 WAC  
AGENCY/EDUCATIONAL INSTITUTION OPERATING PROCEDURES

WAC 326-40-030  
State agency and educational institution responsibilities. Each state agency and educational institution shall:

(a) That the bidder has adequate financial resources or the ability to secure such resources;

(b) That the bidder can meet the performance schedule;

(c) That the bidder is experienced in the type of work to be performed; and

(d) That all equipment to be used is adequate and functioning and that all equipment operators are qualified to operate such equipment.

(4) Cooperate with the office and provide timely access to records and information as needed for the conduct of investigations or the preparation of reports.

(5) Make available to the office, expenditure data in such form and frequency as required in WAC 326-40-050.


WAC 326-40-040  
Contents of state agency and educational institution's plan. (1) Each plan shall include the following:

(a) A statement of commitment from the director or agency head to achieve the state's annual class of contract goals and to maximize opportunities for certified businesses to contract for public works and provide goods, services, and equipment; and

(b) Identification of the person given the responsibility and authority to ensure implementation of the plan; and

(c) A listing of specific measures the agency or educational institution will take to increase participation of certified businesses.

(2) In addition to the requirements in paragraph (1) of this section, the plan for agencies with one hundred or more employees shall include detailed procedures for the following:

(a) Communicating the policy and appropriate procedures to all staff;

(b) Training of staff involved in implementation;

(c) Annual forecasting of contracting, procurement, other expenditure activity, and goalsetting by class of contract;

(d) Setting individual contract goals;

(e) Monitoring and ensuring compliance of contractors and vendors;

(f) Maintenance of records regarding contract awards, purchase orders, and other expenditures as required in this chapter;

(g) Regular provision of data to the office on all expenditures as required in WAC 326-40-050;

(h) Resolving disputes and investigating complaints; and

(i) Review and revision of contracting and procurement documents, policies, and practices which hinder or create barriers to successful implementation of the plan.

WAC 326-40-050 Agency and educational institution reporting. (1) Each agency and educational institution is required to provide data to the office on all expenditures not specifically exempted or excluded by this chapter. The data shall be provided monthly on a schedule that corresponds to the schedule established by the office of financial management (OFM) for the transmission of data related to the state's financial statement.

(2) The format of the data shall be as follows:
(a) Expenditure type identifier (1, 2, or 3).
(b) Agency/educational institution number.
(c) Contractor/vendor name.
(d) Contractor/vendor federal tax number.
(e) OFM-defined subobject code.
(f) Dollar amount to contractor/vendor.
(g) Contract number (when applicable).
(h) Date.
(i) Biennium.

(3) Statutory exemptions. In accordance with RCW 39.19.060, agencies and educational institutions will not be required to provide data on expenditures in the following object codes:

A - SALARIES AND WAGES
B - EMPLOYEE BENEFITS
P - DEBT SERVICE
S - INTERAGENCY REIMBURSEMENTS
T - INTRA-AGENCY REIMBURSEMENTS
W - DEPRECIATION, AMORTIZATION, AND BAD DEBTS
(Proprietary Funds Only)
X - OFM ADJUSTMENTS TO AGENCY DATA

(4) General exclusions. Agencies and educational institutions shall provide data on expenditures in certain subobjects for goods and services which are generally not obtained from the private, for-profit sector. Expenditures of this type will be excluded from the participation base in the calculation of goal attainment.

(5) Exceptions. Certain additional subobjects contain expenditures that legitimately should not be included in the formula for calculating goal attainment. The office shall provide specific guidance annually on the affected subobjects and the procedure to be followed by agencies and educational institutions for crediting such expenditures.

(6) The OFM-defined chart of accounts will be the source of definitions for objects and subobjects. The office shall provide specific guidance annually on the subobjects of expenditures required to be included in the data provided to the office.


WAC 326-40-060 Determining compliance and counting participation at time of bid opening. (1) When a contract is to be awarded to a certified business that performs a commercially useful function as the prime contractor/vendor, the total contract value may be counted toward the contract goal according to the certification status of the business as follows:
(a) Minority business enterprise (MBE): One hundred percent toward the MBE goal;
(b) Women's business enterprise (WBE): One hundred percent toward the WBE goal;
(c) Minority woman business enterprise (MWBE): One hundred percent toward the MBE goal or the WBE goal, but not both;
(d) Combination business enterprise (CBE): Fifty percent toward the MBE goal and fifty percent toward the WBE goal.

(2) When a contract is to be awarded to a joint venture that is approved pursuant to WAC 326-40-100, the dollar value of the portion of the work performed by the certified business may be counted, on a percentage basis, toward the contract goal as set forth in subparagraphs (1)(a-d) of this section; provided, the certified business performs a commercially useful function in the work of the contract.

(3) Subcontractors and subconsultants.
(a) When a certified business performs a commercially useful function as a subcontractor or subconsultant, the dollar value of the work performed by the certified business may be counted toward the contract goal as set forth in subparagraphs (1)(a-d) of this section.
(b) When a certified business is awarded a subcontract on a heavy construction, highway, or street construction project, expenditures to the certified business shall not be counted toward the contract goal if the business subcontracts more than twenty-five percent of the total amount of its own subcontract to a noncertified business.

(4) Suppliers.
Where a certified business is the manufacturer or a regular dealer of materials or supplies required under a contract, one hundred percent of the dollar value of the materials or supplies to be provided may be counted toward the contract goal according to the certification status of the business.

(5) Brokers.
Where a certified business is a broker of goods, materials or supplies, the broker's fee may be counted as part of the total dollar value of the materials or supplies required, provided that the dollar value of the fees charged to deliver the materials or supplies is less than the greater of five percent of the total dollar value, ten percent of the dollar value charged, or twenty percent of ten percent of the dollar value charged to deliver the materials or supplies.

(6) Where a certified business is a hauler, trucker, or delivery service, but not also a regular dealer or the manufacturer of the materials or supplies required on the job site, only the dollar value of the fees charged to deliver the materials or supplies required may be counted toward the contract goal according to the certification status of the business.

(7) Where a certified business is a travel agency, or other business performing similar functions, twenty percent of the dollar value charged for providing a bona fide service in the procurement of transportation may be counted toward the contract goal according to the certification status of the business.

(8) Where a certified business provides bonds or insurance specifically required for the performance of a contract,
the dollar value charged for providing the bonds or insurance
may be counted toward the contract goal according to the cer-
tification status of the business.

[Statutory Authority: RCW 39.19.030(7). WSR 96-24-085, § 326-40-060,
filed 12/3/96, effective 1/3/97; WSR 94-07-064, § 326-40-060, filed 3/14/94,
effective 4/14/94; WSR 92-20-079 and 92-20-124, § 326-40-060, filed
10/6/92 and 10/7/92, effective 11/6/92 and 11/7/92.]

WAC 326-40-070 Determination of commercially
useful function. Whether the work to be performed by a cer-
tified business listed in a bid or proposal to a state agency or
educational institution is a commercially useful function, as
defined in WAC 326-02-030(5), shall be determined by the
state agency or educational institution making the award.

[Statutory Authority: RCW 39.19.030(7). WSR 92-20-079, § 326-40-070,
filed 10/6/92, effective 11/6/92.]

WAC 326-40-080 Substitutions in contracts requir-
ing participation of certified businesses. (1) PRIME CON-
TRACTOR, VENDOR, OR CONSULTANT SUBSTITU-
TION.

(a) Prior to award of the contract: Where a certified busi-
ness 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 institu-
tion may follow its usual procedures for awarding to the next
apparent low bidder, require the contractor to meet goals by
obtaining other certified businesses, or rebid.

(b) After award of the contract to a certified prime con-
tactor, vendor, or consultant, but prior to the start of the
work: Where the business 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 bid-
er, require the contractor to meet goals by obtaining other
certified businesses, 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 a certified prime contractor,
vendor, or consultant, but prior to completion:

(i) Where the business 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.

(ii) Where a certified prime contractor is unable or
unwilling to complete the work, the agency or educational
institution shall follow its usual procedures to seek perform-
cance of the contract, including the imposition of penalties
or sanctions authorized by the contract and may pursue all
other remedies allowed by law.

(2) SUBCONTRACTOR OR SUBCONSULTANT SUBSTITU-
TION.

(a) Prior to award of the contract: Where a certified busi-
ness, selected as a subcontractor or subconsultant to meet the
bid specifications, is decertified or indicates it is unable or
unwilling to perform the work, the agency or educational
institution shall require the contractor or consultant to substi-
tute another certified business in the appropriate category to
meet the contract specifications. The replacement firm may
perform the same work or a different part of the work.

(b) After award of the contract but prior to start of work
by the prime contractor or consultant: Where a certified busi-
ness, selected as a subcontractor or subconsultant 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 or consultant to substi-
tute another certified business in the appropriate category to
meet the contract specifications as stated in the original bid.
The replacement firm may perform the same work or a differ-
ent part of the work. 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 substitu-
ction.

(c) After start of the work but prior to completion by the
prime contractor or consultant: Where a certified business,
selected as a subcontractor or subconsultant 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 prime contractor or consultant, and the agency
or educational institution determines it to be impractical to
substitute another certified business to perform that work or
any other portion of the work at that point, then the contractor
or consultant shall not be required to substitute.

(3) REMEDIES. In the event of default by a bidder or con-
tactor, 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 unilater-
ally withdraw its bid or terminate the contract.

[Statutory Authority: RCW 39.19.030(7). WSR 92-20-079, § 326-40-080,
filed 10/6/92, effective 11/6/92.]

WAC 326-40-090 Timely certification. Where com-
petitive bidding is utilized, only businesses certified at the
time of the submission of bids or proposals may be counted
toward individual contract goals. Where competitive bidding
is not utilized, only businesses certified at the time of award
may be counted: Provided, That businesses participating
under the provisions in WAC 326-40-080 may also be counted.

[Statutory Authority: RCW 39.19.030(7). WSR 92-20-079, § 326-40-090,
filed 10/6/92, effective 11/6/92.]

WAC 326-40-100 Joint venture approval. (1) Reques-
ts for approval. Any joint venture involving a certified
business which is to be counted toward contract participation
goals shall request approval from the awarding state agency
or educational institution. The request must:

(a) Be in writing;

(b) Be accompanied by a written joint venture agreement
that conforms to the requirements of subsection (2) of this
section; and

(c) Contain a statement that gives the approving agency
or educational institution authority to audit the joint venture.

(2) Contents of joint venture agreement.

(a) The joint venture agreement must be signed under
oath by each of the joint venturers. It 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 con-
tribution.

(11/15/01)
(b) The joint venture agreement must also identify the part of the work each joint venturer will do, which participant(s) are certified businesses, and their certification status. The work to be performed by the certified participant must be a commercially useful function.

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

(4) Effect of approval. An approved joint venture is approved only for one specific contract. Disbursement of funds to a certified business that is participating in an approved joint venture shall be counted toward contract goals in accordance with the provisions of WAC 326-40-060 (1) (e).

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

(6) 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 the office. 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 the office. Concurrently, the office may investigate complaints pursuant to its rules and chapter 39.19 RCW.