

WAC 326-02-030 Definitions. Words and terms used in this title ((shall)) have the same meaning as each has under chapter ((120, Laws of 1983)) 43.19 RCW, unless otherwise specifically provided in this title, or the context in which they are used clearly indicates ((that they should be given some other)) another meaning.

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

(2) "Affiliation" has the same meaning as the Small Business Administration (SBA) regulations, 13 C.F.R. Part 121. Except as otherwise provided in 13 C.F.R. Part 121, concerns are affiliates of each other when, either directly or indirectly:

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

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

(c) An identity of interest between or among parties exists such that affiliation may be found.

(3) "Alaska native corporation" means any regional corporation, village corporation, urban corporation, or group corporation organized under the laws of the state of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

(4) "Assets" means all the property of a person available for paying debts or for distribution, including the person's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

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

((+3)) (6) "Certified business" ((or "certified") means a for profit business ((or the status of a business that has been examined)) that has been approved for certification by the Washington state office of minority and women's business enterprises ((and deemed to be)). Businesses certified through the agency's state program include: A minority business enterprise (MBE), a women's business enterprise (WBE), a minority woman's business enterprise (MWBE), a combination business enterprise (CBE), ((or)) and a socially and economically disadvantaged business enterprise (SEDBE).

((+4)) (7) "Class of contract basis" means an entire group of contracts having a common characteristic. Examples include, but are not limited to, personal service contracts, public works contracts, leases, purchasing contracts, and contracts for specific types of goods and/or services.

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

~~(6-))~~ (8) "Commercially useful function" means the performance of real and actual services (~~(which)~~) that are integral and necessary in the discharge of any contractual endeavor, and not solely for the purpose of obtaining certification or obtaining credit for participation goal attainment.

~~((7-))~~ (9) "Common industry practices" means those usages, customs, or practices which are ordinary, normal, or prevalent among businesses, trades, or industries of similar types engaged in similar work in similar situations in the community.

~~((8-))~~ (10) "Conduit" means a certified business which agrees to be named as a subcontractor on a contract in which such certified business does not perform the work but, rather, the work is performed by the prime contractor, prime consultant, material supplier, purchasing contractor, or any other noncertified business.

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

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

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

~~(12)~~ "Corporate sponsored dealership" means a business that does not meet the requirements for certification but is participating in a program specifically developed by a national or regional corporation to address the present-day issue of lack of opportunities for minorities or women in the dealership industry.) (11) "Contingent liability" means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

(12) "Days" means calendar days. In computing any period of time described in this chapter, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or a legal holiday, the period extends to the next day that is not a Saturday, Sunday, or legal holiday. Similarly, in circumstances where the agency is closed for all or part of the last day, the period extends to the next day on which the agency is open.

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

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

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

~~((16-))~~ (15) "Front" means a business which purports to be eligible for certification but is not in fact legitimately owned and controlled by minorities, women, socially and economically disadvantaged individuals, or a combination thereof.

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

~~(18-))~~ (16) "Graduation" means the business is no longer certified because it is no longer a small business concern.

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

~~(20))~~ (17) "Immediate family member" means father, mother, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, spouse, and registered domestic partner.

~~(18) "Joint venture" means ((a partnership of two or more persons or businesses created to carry out a single business enterprise for profit, for which purpose they combine their capital, efforts, skills, knowledge or property and in which they exercise control and share in profits and losses in proportion to their contribution to the enterprise.~~

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

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

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

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

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

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

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

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

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

~~(26))~~ an association of a certified firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the certified firm is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and

profits of the joint venture are commensurate with its ownership interest.

(19) "Liabilities" means financial obligations including, but not limited to, accounts payable, notes payable to a bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

(20) "Native Hawaiian organization" means any community service organization serving native Hawaiians in the state of Hawaii which is a not-for-profit organization chartered by the state of Hawaii, is controlled by native Hawaiians, and whose business activities will principally benefit such native Hawaiians.

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

~~((27))~~ (22) "Pass-through" means a certified business ((which)) that buys goods from a noncertified business and simply resells those goods to the state, state contractors, or other persons doing business with the state for the purpose of allowing those goods to be counted towards fulfillment of ((WBE or MBE)) goals for participation of certified firms.

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

~~(29))~~ (23) "Personal net worth" means the ((socially and economically disadvantaged individual's net personal assets and liabilities, excluding an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence. If the statement of personal net worth that an individual submits shows that the individual's personal net worth exceeds seven hundred fifty thousand dollars, the individual's economic disadvantage is rebutted.

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

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

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

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

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

~~(35)~~ "Socially and economically disadvantaged business enterprise" or "SEDBE" means a small-business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more socially and economically disadvantaged individuals or socially and economically disadvantaged business enterprises certified by the office. The socially and economical-

ly disadvantaged owners must be United States citizens or lawful permanent residents.

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

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

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

~~(i) Minority;~~

~~(ii) Women;~~

~~(iii) Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective.~~

~~(37)) net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse/domestic partner.~~

~~(24) "Small Business Administration" or "SBA" means the United States Small Business Administration.~~

~~(25) "Small business concern" means a small business concern as defined under section 3 of the Small Business Act and 13 C.F.R. Part 121 that also does not exceed the cap on average annual gross receipts specified in WAC 326-20-092.~~

~~(26) "Socially disadvantaged individual" means the following for the purposes of certification, consistent with 49 C.F.R. Sec. 26.5:~~

~~(a) A person who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.~~

~~(b) Any individual who the agency finds to be a socially disadvantaged individual on a case-by-case basis, per chapter 326-20 WAC.~~

~~(c) Any individual in the following groups, members of whom are rebuttably presumed to be socially disadvantaged for the purposes of certification, consistent with 49 C.F.R. Sec. 26.5:~~

~~(i) Persons who are Asian or Pacific islander: Person whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Guam, the Republic of Palau, the Federated States of Micronesia, and the Republic of Marshall Islands, Commonwealth of the Northern Mariana Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Hong Kong, India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;~~

~~(ii) Persons who are black/African American: Persons having origins in any of the black racial groups of Africa;~~

~~(iii) Persons who are Hispanic/Latino: Persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;~~

~~(iv) Persons who are Native American or Alaska native: Persons who are members or descendants of a federal or state recognized Indian tribe or Alaska native corporation;~~

(v) Persons who are native Hawaiian: Persons whose ancestors were natives, prior to 1778, of the area which now comprises the state of Hawaii;

(vi) Women; and

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective.

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

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

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

~~(a) Provides or furnishes goods or materials;~~

~~(b) Performs a commercially useful function; and~~

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

~~(40))~~ (28) "Switch business" means a business ((which)) that was previously owned and controlled by ((a man, men or nonminorities, or individuals who are)) an individual(s) who is not socially and economically disadvantaged, ((which)) that has made technical changes to its business structure so that it is now purportedly owned and controlled by a ((woman or women or by a minority person or persons, or by a)) person(s) who is socially and economically disadvantaged ((individual or individuals)), but continues to operate in substantially the same manner as it did prior to the written revisions of the business structure.

~~((41) "Women's business enterprise," "women-owned business enterprise," or "WBE" means a small business concern, organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by the office. The women owners must be United States citizens or lawful permanent residents.))~~ (29) "Tribally owned concern" means any small business concern at least fifty-one percent owned by an Indian tribe as defined in this section.

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

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

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

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

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

~~(d) Whether)) certified under or applying to be certified under.~~

~~(b) The business is or will be responsible for executing a distinct element of work in the performance of a contract((~~+~~)) and ((~~the principals or employees of the business~~)) is carrying out its responsibilities by actually ((perform, manage, and supervise)) performing, managing, and supervising the work ((for which the business is or will be responsible;~~

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

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

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

~~(3) Factors which may indicate that a supplier is not performing)) involved; and~~

~~(c) The business is responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (when applicable) and paying for the material itself.~~

~~(2) A business does not perform a commercially useful function ((include, but are not limited to, the following:~~

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

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

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

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

~~(a) Its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. The agency will consider similar transactions in which certified firms do not participate to evaluate standard industry practice.~~

~~(b) It does not exercise responsibility for at least thirty percent of the total cost of its contract with its own workforce, or it subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.~~

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
326-02-045	326-20-230