

**WAC 468-19-010 Counting participation.** (1) When a business certified by the office of minority and women's business enterprises as a minority or women business enterprise (MWBE) pursuant to RCW 39.19.120 participates in a contract (construction or consultant service agreement), only count the value of the work performed by the MWBE.

(2) Count the entire amount of that portion of the contract that is performed by the MWBE's own forces. Include the cost of supplies and materials obtained by the MWBE for the work of the contract, including supplies purchased or equipment leased by the MWBE (except supplies and equipment the MWBE purchases or leases from the prime contractor or its affiliate).

(3) Count the entire amount of fees or commissions charged by a MWBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, toward MWBE goals, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(4) When a MWBE participates as a broker (i.e., arranging a transaction or service but does not provide a work product or enhancement), only the dollar value of the fee or commission charged or 20 percent of the total dollar value of expenditures by the MWBE (whichever is greater) counts toward the MWBE goal.

(5) Do not count the cost of the materials and supplies themselves toward MWBE goals.

(6) When a MWBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward MWBE goals only if the MWBE's subcontractor is itself a MWBE. Work that a MWBE subcontracts to a non-MWBE firm for more than 25 percent does not count toward MWBE goals.

(7) Do not count payments to a MWBE when the MWBE firm participates as an extra participant in a transaction, through which funds are passed in order to give the appearance of participation by the MWBE firm and an attempt to count toward the enforceable MWBE goal. Pass-throughs are not countable towards the MWBE goal and are a violation of the program requirements.

(8) When a MWBE firm performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work, commensurate with the firm's interest in the joint venture, of the contract that the MWBE performs with its own forces toward the goal.

(9) Count expenditures with MWBEs for materials or supplies toward MWBE goals as provided in the following:

(a) If the materials or supplies are obtained from a MWBE manufacturer, count 100 percent of the cost of the materials or supplies toward MWBE goals. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(b) If the materials or supplies are purchased from a MWBE supplier, count 100 percent of the cost of the materials or supplies toward MWBE goals. A supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought,

kept in stock, and regularly sold or leased to the public in the usual course of business.

(10) Determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a supplier or a broker) on a contract-by-contract basis.

(11) Count expenditures to a MWBE toward MWBE goals only if the MWBE is performing a commercially useful function (CUF) on that contract.

(12) If a firm is certified as a MWBE at the time of initiation of their contract work, count the firm's participation toward the MWBE goals.

(13) If a firm becomes certified during the performance of their work, count the firm's participation from the date of certification.

(14) Do not count the dollar value of work performed under a contract with a firm 60 days after it has ceased to be certified.

(15) When a MWBE is removed from the MWBE program during the contract, all prior participation of that MWBE shall continue to count towards the MWBE goal, as long as the contract with the MWBE was executed prior to the removal notice.

(16) Do not count the participation of a MWBE toward a prime contractor's final compliance with its MWBE obligations on a contract until the amount being counted has actually been paid to the MWBE.

[Statutory Authority: RCW 39.04.155, 43.19.727, 47.01.101, 47.28.030, and chapter 39.19 RCW. WSR 24-05-030, § 468-19-010, filed 2/12/24, effective 3/14/24.]