

**Chapter 326-02 WAC**  
**GENERAL PROVISIONS**

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**WAC**

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**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

326-02-045	Factors considered in determining performance of commercially useful function. [Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-02-045, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-045, filed 5/11/92, effective 6/11/92.] Amended and decodified by WSR 19-13-014, filed 6/7/19, effective 7/8/19. Statutory Authority: RCW 39.19.030 and 39.19.120. Recodified as § 326-20-230.
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**WAC 326-02-010 Purpose.** The purpose and intent of chapter 120, Laws of 1983, and of Title 326 WAC is to provide the maximum practicable opportunity for increased participation by minority, women, and socially and economically disadvantaged-owned and controlled businesses 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, women, and socially and economically disadvantaged-owned and controlled businesses and the entry of new and diversified minority, women, and socially and economically disadvantaged-owned and controlled businesses into the marketplace. These rules shall be applied and interpreted to promote this purpose.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-02-010, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-010, filed 5/11/92, effective 6/11/92. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-02-010, filed 10/28/83.]

**WAC 326-02-020 Applicability.** Title 326 WAC applies to all applications for certification, the linked deposit program, and to all public works and procurement by state agencies and educational institutions: Provided, That this title 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: RCW 39.19.030, 43.86A.060, and 2007 c 500 §§ 1 and 2. WSR 08-03-116, § 326-02-020, filed 1/22/08, effective 2/22/08. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-020, filed 5/11/92, effective 6/11/92. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-02-020, filed 10/28/83.]

**WAC 326-02-030 Definitions.** Words and terms used in this title have the same meaning as each has under chapter 43.19 RCW, unless otherwise specifically provided in this title, or the context in which they are used clearly indicates another meaning.

(1) "Advisory committee" means the advisory committee 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 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.

(6) "Certified business" means a for profit business that has been approved for certification by the Washington state office of minority and women's business enterprises. 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), and a socially and economically disadvantaged business enterprise (SEDBE).

(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.

(8) "Commercially useful function" means the performance of real and actual services 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.

(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.

(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.

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

(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.

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

(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 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.

(22) "Pass-through" means a certified business 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 goals for participation of certified firms.

(23) "Personal net worth" means the 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.

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

(29) "Tribally owned concern" means any small business concern at least fifty-one percent owned by an Indian tribe as defined in this section.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-02-030, filed 6/7/19, effective 7/8/19; WSR 04-08-093, § 326-02-030, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 96-24-085, § 326-02-030, filed 12/3/96, effective 1/3/97. Statutory Authority: RCW 39.19.030. WSR 94-11-116, § 326-02-030, filed 5/18/94, effective 6/18/94. Statutory Authority: RCW 39.19.030(7). WSR 92-24-107, § 326-02-030, filed 12/2/92, effective 1/2/93; WSR 92-11-007, § 326-02-030, filed 5/11/92, effective 6/11/92; WSR 89-24-047, § 326-02-030, filed 12/1/89, effective 1/1/90. Statutory Authority: Chapter 39.19 RCW. WSR 88-12-060 (Order 88-5), § 326-02-030, filed 5/31/88; WSR 88-08-031 (Order 88-4), § 326-02-030, filed 4/1/88; WSR 87-18-030 (Order 87-6), § 326-02-030, filed 8/27/87; WSR 86-17-018 (Order 86-2), § 326-02-030, filed 8/11/86; WSR 85-14-101 (Order 85-6), § 326-02-030, filed 7/2/85; WSR 84-09-002 (Order 84-5), § 326-02-030, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-02-030, filed 10/28/83.]

**WAC 326-02-031 Office of minority and women's business enterprises account—Created—Purpose.** The office of minority and women's business enterprises account is created in the custody of the state treasurer for the purpose of defraying costs of the office in administering chapter 39.19 RCW. Only the director or the director's designee may authorize expenditures from the account. Money in the account may be spent only after appropriation. The revolving fund account is subject to the allotment procedures provided under chapter 43.88 RCW. The director of the office of financial management shall prescribe appropriate accounting procedures to accurately record payments to the fund from businesses, state agencies and educational institutions, and political subdivisions and expenditures from the fund.

[Statutory Authority: 1993 c 195. WSR 93-16-080, § 326-02-031, filed 8/3/93, effective 9/3/93.]

**WAC 326-02-033 State agency and educational institution fees.** The office shall charge a fee to each state agency and educational institution to assist in the support of the state's minority and women's business enterprise program. The fee will be apportioned according to the state agency and educational institution's expenditure level of funds which are subject to chapter 39.19 RCW and Title 326 WAC.

State agency and educational institution's charges that are five-hundred dollars or less will be billed once in a biennium. Charges over five hundred dollars will be billed at least yearly to limit administrative expenditures. The office will submit invoices to state agencies and educational institutions and payments will be due on or before July 15 unless, the state agency or educational institution is billed more frequently than yearly.

[Statutory Authority: 1993 c 195. WSR 93-16-080, § 326-02-033, filed 8/3/93, effective 9/3/93.]

**WAC 326-02-034 Political subdivision fees.** (1) It is the intent of the state legislature that political subdivisions within the state of Washington contribute to the costs of the state's certification program for minority and women's business enterprises. For the purpose of this section, political subdivisions means any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington that administers a policy or program, or funds from whatever source, which requires or encourages the use of certified minority, women, or disadvantaged business enterprises.

(2) Effective July 1, 1993, the office shall allocate a portion of its biennial operational costs to political subdivisions. Each political subdivision shall pay a proportionate share of this allocation based on the formula set forth in subsection (4) of this section.

(3) (a) The fee charged to each political subdivision for the biennium beginning July 1, 2023, and subsequent biennia unless revised by rule, shall be based on the annual average of expenditures for capital projects, supplies and other services for the most recent available biennium as reported by the state auditor's office. Data on the annual average of expenditures by school districts and educational service districts will be obtained from the office of the superintendent of public instruction. The basis for the fee to be charged to the Housing Authorities is the number of low-income units owned or managed during the last fiscal year as reported to the U.S. Department of Housing and Urban Development. The maximum amount charged to any political subdivision must not exceed \$60,000 in the biennium beginning July 1, 2023. In subsequent biennia, the maximum amount charged must be adjusted for inflation as measured in the implicit price deflator index.

(b) When insufficient data is available to calculate the average expenditures from the sources listed in (a) of this subsection, the office may either use other sources for the data or estimate the amount of relevant expenditures. In either event, the office shall allow the affected political subdivisions to offer alternative data on which to base its calculation. New political subdivisions will be charged based on the office's estimate of the annual average of relevant expenditures by the entity for the current biennium.

(c) After paying the fee, the political subdivisions may challenge the office about the accuracy of the data used to calculate the fee under (a) of this subsection. Upon verification by the state auditor, the fee may be revised and refund issued or additional fee assessed.

(d) Following the initial billing in each biennium, which will include the total amount due for the biennium beginning July 1, 2003, the office will mail invoices on a quarterly basis one month before the start of each quarter for the outstanding balance at that time. Payments shall be due within 30 calendar days after receipt of the invoice.

(4) (a) The following formula will be used to calculate the fees: The political subdivision's average annual expenditures multiplied by 0.00006.

(b) The fee to Housing Authorities will be one dollar per low-income unit owned or managed during the last fiscal year.

(5) The office shall develop a policy and procedure for collection of any invoice that is not paid within 30 calendar days. The office shall distribute the collection policy and procedure to all political subdivisions along with the initial and quarterly billings.

[Statutory Authority: RCW 39.19.030 and 39.19.220. WSR 23-11-085, § 326-02-034, filed 5/17/23, effective 6/17/23. Statutory Authority: RCW 39.19.030. WSR 11-11-030, § 326-02-034, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.220. WSR 04-13-032, § 326-02-034, filed 6/9/04, effective 7/10/04. Statutory Authority: RCW 39.19.030(17). WSR 98-13-075, § 326-02-034, filed 6/15/98, effective 7/16/98. Statutory Authority: RCW 39.19.030(7). WSR 97-17-045, § 326-02-034, filed 8/14/97, effective 9/15/97. Statutory Authority: RCW 39.19.220. WSR 94-11-113, § 326-02-034, filed 5/18/94, effective 6/18/94.]

**WAC 326-02-040 Prohibited activities with regard to chapter 39.19 RCW.** (1) RCW 39.19.080 makes it unlawful for a person, firm, corporation, business, union, or other organization to:

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

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

(c) 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, women, or socially and economically disadvantaged individual's business enterprise for the purpose of this chapter;

(d) 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, women, or socially and economically disadvantaged individual's business enterprise;

(e) 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, women, or socially and economically disadvantaged individual's business enterprise;

(f) 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;

(g) Knowingly make false statements that any entity is or is not certified as a minority, women, or socially and economically disadvantaged individual's business enterprise for purposes of obtaining a contract governed by this chapter;

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

(2) A certified business engages in prohibited activity when it fails to perform a commercially useful function on any public-sector contract or procurement. Failure to perform a commercially useful function occurs when a business:

(a) Functions as a conduit; or

(b) Functions as a pass-through; except brokers and firms operating in industries where such activity is common industry practice, e.g., insurance or real estate.

(3) A business that is deemed to be a switch business is also deemed to have engaged in prohibited activity.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-02-040, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-040, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-22-017 (Order 88-9), § 326-02-040, filed 10/24/88.]

**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 or procurement within which a violation occurs. Nothing in chapter 39.19 RCW or this title 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 for each violation or up to ten percent of the amount of the contract; or
- (g) Decertification or denial of certification.

(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 served personally or by certified mail, return receipt requested, to the person or business 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 served, the person incurring the penalty appeals the penalty by filing a notice of appeal with the office.

(5) If a notice of appeal is filed in a timely manner, the office shall conduct a brief adjudicative proceeding as outlined in chapter 326-08 WAC.

[Statutory Authority: RCW 39.19.030. WSR 11-11-030, § 326-02-050, filed 5/11/11, effective 6/11/11; WSR 94-11-117, § 326-02-050, filed 5/18/94, effective 6/18/94. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-050, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 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 certified or noncertified business;
- (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: RCW 39.19.030(7). WSR 92-11-007, § 326-02-060, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 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 in preserving competition.

[Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-070, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 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 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: RCW 39.19.030(7). WSR 92-11-007, § 326-02-080, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 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 the certification of a business is necessary to prevent immediate harm to the public welfare, the business 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 business 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 presiding officer may recommend that:
- (a) Suspension of certification remain in effect for up to one year;
  - (b) The suspension be removed; or
  - (c) That the business be decertified.

[Statutory Authority: RCW 39.19.030. WSR 11-11-030, § 326-02-090, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-090, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-22-017 (Order 88-9), § 326-02-090, filed 10/24/88.]