

1230.0150 DEFINITIONS.

Subpart 1. **Scope.** Within parts 1230.0100 to 1230.1910, the following apply, unless clearly indicated otherwise by the context.

Subp. 2. **Affiliation.** "Affiliation" has the meaning given in the Small Business Administration (SBA) regulations, Code of Federal Regulations, title 13, part 121.

A. Except as otherwise provided in Code of Federal Regulations, title 13, part 121, businesses are affiliates of each other when, either directly or indirectly:

- (1) one business controls or has the power to control the other; or
- (2) a third party or parties control or have the power to control both; or
- (3) an identity of interest between or among parties exists such that affiliation may be found.

B. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a business meets small business size criteria and the statutory cap on the participation of businesses in the Minnesota small business procurement program.

Subp. 2a. **Best value.** "Best value" describes a result intended in the acquisition of all goods and services unless otherwise provided for by law. Except as otherwise provided by law, price must be one of the evaluation criteria when acquiring goods and services. Other evaluation criteria may include, but are not limited to, environmental considerations, quality, and vendor performance.

Subp. 2b. **Bid.** "Bid" means an offer extended by a vendor in response to a request for bids.

Subp. 3. **Broker.** "Broker" means a business that does not take legal title to the product, does not add value to the product, and has no written authorization to represent the manufacturer of the product.

Subp. 4. **Business.** "Business" means a contractor, subcontractor, supplier, consultant, or provider of technical, administrative, or physical services organized as a sole proprietorship, partnership, association, corporation, or other entity formed for the purpose of doing business for profit.

Subp. 4a. **Competitive bidding.** "Competitive bidding" means a process by which an award is made to the lowest responsible bidder meeting all terms, conditions, and specifications of the solicitation document.

Subp. 5. **Contractor.** "Contractor" means a business that is engaged in construction such as general, mechanical, or electrical contracting, or that provides a specific service such as trash removal, snow removal, janitorial services, or professional or technical services.

Subp. 6. **Dealer, jobber, or distributor.** "Dealer," "jobber," or "distributor" means a business that maintains a store, warehouse, or other establishment in which a line or lines of products are kept in inventory and are sold to the public on a wholesale or retail basis.

Subp. 7. **Debarment.** "Debarment" means the disqualification of a person from receiving solicitations, the award of a contract by a governmental body, or selling any products or services to state agencies for a specified time commensurate with the seriousness of the offense, the failure, or the inadequacy of performance.

Subp. 8. **Director.** "Director" means director of the Office of State Procurement or a procurement manager with written delegation of authority from the director.

Subp. 9. **Division.** "Division" means Office of State Procurement, Department of Administration, Room 112, State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155 and its successor divisions.

Subp. 9a. **Dominant in its field of operation.** "Dominant in its field of operation" means exceeding the annual gross revenues or sales specified in Minnesota Statutes, section 16C.16, subdivision 2.

Subp. 10. **Franchise.** "Franchise" means an operating agreement obtained from a franchiser to conduct a business entity that does not provide the operator with the exclusive right to profit from the operator's effort, commensurate with ownership and to bear the risk of loss or failure and does not meet the test of ownership outlined in subpart 26 and parts 1230.1601 to 1230.1607.

Subp. 11. **Joint venture.** "Joint venture" means the temporary association of two or more businesses to secure and fulfill a contract. For contracts awarded under the preference or set-aside provisions of the small business procurement program in parts 1230.1400 to 1230.1910, all parties in the joint venture must be certified as targeted group, economically disadvantaged area, or veteran-owned businesses.

Subp. 12. **Liquidated damages.** "Liquidated damages" means a specific sum of money, agreed to as part of a contract to be paid by one party to the other in the event of a breach of contract in lieu of actual damages, unless otherwise provided by law.

Subp. 13. **Manufacturer.** "Manufacturer" means a business that makes or processes raw materials into a finished product.

Subp. 14. **Manufacturer's representative.** "Manufacturer's representative" means a business that has a written agreement or agreements with one or more manufacturers or manufacturer's authorized distributors to sell the products of the manufacturer, but that is not an employee of the manufacturer.

Subp. 15. **Material variance or material deviation.** "Material variance" or "material deviation" means a variance in a response from specifications or conditions that allows a responder a substantial advantage or benefit not enjoyed by all other responders or gives the state something significantly different from what the state requested in the solicitation document.

Subp. 15a. **NAICS or North American Industry Classification System.** "NAICS" or "North American Industry Classification System" is a system developed for use in the classification of business establishments by type of activity for the purpose of facilitating the collection, tabulation, presentation, and analysis of data collected by various agencies of the United States government, state agencies, trade associations, and private research organizations for promoting uniformity and comparability in the presentation of statistical data relating to those establishments and their fields of endeavor.

Subp. 16. **Open market.** "Open market" means purchases made in the marketplace without the need for competitive solicitations.

Subp. 17. **Person.** "Person" means a natural person or a business and includes both if the natural person is engaged in a business.

Subp. 18. **Principal place of business.** "Principal place of business" means the business location where the individuals who manage the business's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the division shall determine the principal place of business.

Subp. 18a. **Proposal.** "Proposal" means an executed document submitted by a vendor in response to a request for proposals.

Subp. 19. **Reinstatement.** "Reinstatement" means a process by which a debarred vendor is restored to the state vendor list.

Subp. 19a. **Responder.** "Responder" means a person who provides an offer in response to a solicitation.

Subp. 20. **Responsible vendor.** "Responsible vendor" means a vendor who:

A. is a manufacturer of, deals in, but is not a broker of, or is the agent of a manufacturer with full knowledge of supplies to be furnished; or

B. if services are to be provided, has the necessary skills or is in the business of supplying these services; and

C. can demonstrate a satisfactory credit standing, lack of delinquent tax liability, and the financial capability to perform a contract as evidenced by the ability to obtain bonding when required; and

D. has no unresolved record of failure to perform, or of unsatisfactory performance of, contracts for the state or other customers; and

E. is not currently debarred by another government entity for any cause including defaults on contracts, late deliveries, products not meeting specifications, substandard installation, or service; and

F. is otherwise qualified under rule and law, including incorporation in or registration to do business in Minnesota; and

G. has not engaged in unlawful practices, associated with organized crime, or operated under false names or fronts as a small business or a socially or economically disadvantaged small business; and

H. is in compliance with all tax laws of Minnesota, as evidenced by timely filing of all required returns, reports, payments, and possession of all applicable stamps, licenses, or other permits, and freedom from any judgment, lien, or seizure of assets or property to satisfy tax payments or duties; and

I. is willing to furnish all information necessary to determine responsibility as outlined in items A to H within 30 calendar days or less or within a reasonable amount of time determined by prior consensus between the bidder and the division.

Subp. 20a. **Small Business Administration.** "Small Business Administration" or "SBA" means the United States Small Business Administration.

Subp. 21. [Repealed, 42 SR 543]

Subp. 21a. **Solicitation.** "Solicitation" means a request for bids or a request for proposals.

Subp. 22. **Suspension.** "Suspension" means to be temporarily suspended by the director of the Office of State Procurement from receiving solicitations, the award of a contract, or selling any products or services to state agencies while the director determines if there is probable cause for debarment.

Subp. 23. **Targeted group business.** "Targeted group business" or "TG" means certified businesses designated by the commissioner of administration that are at least 51 percent owned and operated by women, persons with substantial physical disabilities, or specific minorities who provide goods, products, or services within purchasing categories designated by the commissioner.

Subp. 24. **Terms governing socially and economically disadvantaged persons.** The terms in items A to D have the meanings given them for purposes of administering the small business procurement program of which members are rebuttably presumed to be socially and economically disadvantaged.

A. "Racial minority" means an individual in one or more of the categories in subitems (1) to (9).

(1) "Alaska Native" means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom an Alaska Native village or Alaska Native group regards as an Alaska Native if the citizen's father or mother is regarded as an Alaska Native.

(2) "Black American" means an individual whose origin is any of the Black racial groups of Africa.

(3) "Hispanic American" means an individual of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.

(4) "Native American" means an individual who is an enrolled member of a federally or state-recognized Indian tribe, Alaska Native, or Native Hawaiian.

(5) "Asian-Pacific American" means an individual whose origin is from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the United States Trust Territories of the Pacific Islands (the Republic of Palau), the Republic of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, the Federated States of Micronesia, or Hong Kong.

(6) "Subcontinent Asian American" means an individual whose origin is from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka.

(7) "Native Hawaiian" means any individual whose ancestors were natives, prior to 1778, of the area that now comprises the state of Hawaii.

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native corporation, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the state in which the tribe, band, nation, group, or community resides.

(9) "Tribally owned business" means any business at least 51 percent owned by an Indian tribe.

B. "Women" means persons of the female gender.

C. "Substantial physical disability" means with respect to an individual:

(1) a physical impairment that substantially limits one or more major life activities;

(2) a record of such an impairment; or

(3) being regarded as having such an impairment.

D. This subpart includes any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Subp. 25. **Third-party lessor.** "Third-party lessor" means a business that as a lessee acts as a lessor to a third party.

Subp. 26. **Small business eligible for certification as socially and economically disadvantaged, economically disadvantaged area, or veteran-owned business.** "Small business eligible for certification as socially and economically disadvantaged, economically disadvantaged area, or veteran-owned business" means a small business entity with its principal place of business in Minnesota organized for profit, including an individual, partnership, corporation, joint venture, association, or cooperative that is at least 51 percent owned and is operationally controlled on a

day-to-day basis by citizens or lawfully admitted permanent residents of the United States. Certified rehabilitation facilities and extended employment providers need not be organized for profit to be eligible for certification.

Subp. 26a. **Socially and economically disadvantaged individual.** "Socially and economically disadvantaged individual" means any individual who is a citizen, or lawfully admitted permanent resident of the United States, and who has been subjected to racial or ethnic prejudice or cultural bias because of the individual's identity as a member of a group or groups and without regard to the individual's own qualities. The disadvantage must stem from circumstances beyond the individual's control.

A. Any individual the commissioner finds to be a socially and economically disadvantaged individual is on a case-by-case basis. An individual must demonstrate that the individual has identified as a member of a designated group under subpart 24.

B. Being born in a particular country is not the only criteria used to determine that an individual is a member of one of the groups listed in subpart 24.

Subp. 27. **Vendor.** "Vendor" means a natural person or a business and includes both if the natural person is engaged in a business.

Subp. 28. **Veteran-owned business.** "Veteran-owned business" or "VO" means a for-profit business:

A. that is at least 51 percent owned by one or more veterans as defined in Minnesota Statutes, section 16C.16, or in the case of a corporation in which 51 percent of the stock is owned by one or more such individuals; and

B. whose management and daily business operations are controlled by one or more of the veterans who own it.

Statutory Authority: *MS s 16B.04; 16B.18; 16B.19; 16B.22; 16C.03; 16C.16; 16C.19*

History: *16 SR 194; 28 SR 499; 42 SR 543*

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