

SMALL BUSINESS ENTERPRISE (SBE) RULE CHAPTER 40E-7, F.A.C.



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Effective August 3, 2006

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40E-7.668 Policy.

(1) The rules under this Small Business Enterprise Contracting Program (the “Program”) establish policies and procedures designed to help small businesses, including those owned by women and minorities, to participate in the South Florida Water Management District’s (“District”) procurement and contract activities.

(2) It is the purpose of the Program to spur economic development and support small businesses, including woman-owned and minority-owned businesses, to successfully expand in the marketplace.

(3) The District shall annually evaluate the progress of this Program and determine whether the specific provisions require any modification, expansion, and curtailment.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 12-9-20.

40E-7.669 Definitions.

(1) “Affiliate Business” means a business that is a Subsidiary of or owned in part by another business concern. Entities are affiliates of each other when one impacts the other by sharing resources, officers, or directors that have any percentages of ownership, or controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.

(2) “Applicant” is defined as the business that is seeking District Certification or Recertification.

(3) “Business” is any entity which complies with all statutes and regulations, specifically, any corporation, limited liability company, partnerships, general partnerships, limited partnerships, other for-profit entities, engaging in commerce, including but not limited to manufacturing or a service with a federal tax identification number.

(4) “Certification” or “Recertification” means the process by which the District determines that a business meets the District’s criteria for a Small Business Enterprise (SBE).

(5) “Commodity Code” A numeric system designed to list commodities or services by classes and sub-classes. A numeric identifier of supplies, materials, goods, merchandise, equipment or other tangible personal property (purchase or lease), including the contractual services.

(6) “Decertification” is the process in which the District shall determine that an SBE no longer complies with the District Certification criteria.

(7) “District Small Business Enterprise” means a business certified by the District in either construction, commodities, services or a combination thereof whose 3-year average gross receipts, including Affiliate Businesses, shall not exceed \$13 million if the business provides construction, \$5 million if the business provides commodities, and \$6 million if the business provides services. A District SBE is registered to do business with the State of Florida through the Division of

Corporations and holds the appropriate license(s) required by law to do business in the state of Florida.

(8) “Government Agency” means any state, county, regional or local government in Florida.

(9) “Gross Receipts” means the total sales for the Applicant as specified in its Federal tax return or if it is a new company which has not filed a Federal tax return, in its audited financial statement before deductions for returned items, allowances, and discounts.

(10) “Industry Categories” means construction, commodities and services.

(11) “Non SBE Prime” means a business not currently certified by the District as a Small Business Enterprise which submits a bid or proposal for the purpose of being awarded a legally-binding agreement as a Prime Contractor for the performance of work at a mutually agreed-upon price in accordance with agreed-upon terms and conditions with the District.

(12) “Prime Contractor” means any individual or contracting entity with whom the District has entered into a legally-binding agreement for performance of work at a mutually agreed-upon price in accordance with agreed-upon terms and conditions.

(13) “Reciprocal Certification” means the SBE Certification by the District of an Applicant who is actively certified by another Florida government agency.

(14) “Responsible” means a business that is capable in all respects of fully performing the contract requirements and which has the integrity and reliability that will assure good faith performance.

(15) “Responsive” with respect to bidders, bids, or proposals means a business’s bid or proposal conforms in all material respects to the invitation to bid or request for proposal including all SBE goals set forth.

(16) “SBE Prime” means a business certified by the District as a small business that submits a bid or proposal for the purpose of being awarded a legally binding agreement as an SBE Prime contractor for the performance of work at a mutually agreed-upon price in accordance with agreed-upon terms and conditions with the District.

(17) “SBE Subcontractor” means a business certified by the District having a direct contract with a contractor or with any other Subcontractor for the performance of a part of the work.

(18) “SBE Utilization Plan” means Form No. 0956 Small Business Enterprise Subcontractor Participation Schedule and Form No. 0957, Statement of Intent to Perform as a Small Business Enterprise Subcontractor, both forms are incorporated by reference in paragraph (2)(a) of Rule 40E-7.670 F.A.C.

(19) “Subsidiary” is defined as a Business that another company has any ownership interest in.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-07, 8-29-13, 12-9-20.

40E-7.670 Competitive Solicitation Preferences.

The Small Business Enterprise Contracting Rule in this part provides for 2 Competitive Solicitation Preferences designed to assist small businesses. Sheltered Market and Subcontracting Requirements are outlined below.

(1) Sheltered Market Program. The District may provide for sheltered markets to allow only SBE's to bid on designated solicitations. In order to designate a sheltered market, the District must identify at least 3 SBE's available to perform work within the industry identified in the solicitation.

(2) Subcontracting Requirements.

(a) Bids – The District shall set subcontracting goals for all bids based on availability of vendors registered with the District, including SBE firms able to perform work within specific Commodity Codes. The SBE goals shall be applied as a percentage of the total contract value to be assigned to SBE firms. The maximum SBE goal that will be applied to any solicitation will be 25%. When an SBE goal is set bidders shall provide work to one or more SBE's in order to meet the goal. At the time of submittal of its bid, the bidder shall identify all SBE firms which will be utilized as subcontractors, by using Form No. 0956, "Small Business Enterprise Subcontractor Participation Schedule" effective (August 29, 2013) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-12410>). All bids submitted where SBE participation is required, shall include Form No. 0957, "Statement of Intent to Perform as a Small Business Enterprise Subcontractor" effective (August 29, 2013) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-12422>). Form No. 0957 shall be signed by the SBE subcontractor, Form Nos. 0956 and 0957, together called the SBE Subcontractor Utilization Plan, must reflect the parties' intent to establish a business relationship as well as the type of work and percentage of work that the SBE subcontractor will perform. Failure to submit any of the information as required on Form Nos. 0956 and 0957 shall lead to the bid being deemed non-Responsive. Form Nos. 0956 and 0957 are incorporated by reference herein and are available at no cost by contacting the South Florida Water Management District Clerk's Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800)432-2045, ext. 6805, or (561)682-6805.

Any bidder failing to meet the established goal shall be deemed non-Responsive. If the prime bidder is an SBE Prime, only Form 0956 must be submitted with its bid.

(b) Standard Proposals – For solicitations where a contract is awarded based on an evaluation criteria, and where the scope of work is clearly defined, the District shall determine subcontracting goals for each solicitation based on availability of SBE firms as stated above in paragraph (2)(a). The maximum goal that will be applied to any solicitation will be 25%. The goals shall be applied as a percentage of the total contract value to be assigned to SBE firms. Any proposer failing to meet the established goal shall be deemed non-Responsive. At the time the proposal is submitted, the proposer shall identify all SBE firms (if any) which will be utilized as subcontractors, by using Form No. 0956, "Small Business Enterprise Subcontractor Participation Schedule," incorporated by reference in paragraph (2)(a) herein. All proposals with SBE subcontractor participation shall include Form No. 0957, "Statement of Intent to Perform as an Small Business Enterprise Subcontractor," also incorporated by reference in paragraph (2)(a) herein. Form 0957 shall be signed by the SBE subcontractor. The SBE Subcontractor Utilization Plan must reflect the parties'

intent to establish a business relationship as well as the type of work and percentage of work that the SBE subcontractor will perform. If the prime proposer is an SBE Prime only Form No. 0956 must be submitted with its bid.

(c) Work Order Proposals – For solicitations where a contract is awarded based on evaluation criteria and where the scope of work is not clearly defined resulting in work order contracts such solicitations shall require proposers to commit to SBE goals assigned to individual work orders issued throughout the term of the contract. The goal for individual work orders will be based on availability of SBE firms as provided in paragraph (2)(a). The maximum goal that will be applied to any work order will be 25% unless the Prime Contractor has failed to meet prior SBE goals, in which case the maximum goal may exceed 25%. At the time the proposal is submitted, the proposer shall identify all proposed SBE firms that will be utilized as subcontractors.

At the time a work order with an SBE goal is assigned, the Prime Contractor shall submit a cost proposal, and identify all SBE subcontractors and the percentage of work that the SBE subcontractor(s) will perform by using Form No. 0956, “Small Business Enterprise Subcontractor Participation Schedule,” incorporated by reference in paragraph (2)(a) herein. All cost proposals shall also include Form No. 0957, “Statement of Intent to Perform as a Small Business Enterprise Subcontractor,” also incorporated by reference in paragraph (2)(a) herein. Form No. 0957 shall be signed by the SBE subcontractor. A work order will not be executed with a Prime contractor whose cost proposal does not meet the established goal for that work order. The District will set the SBE goal in any particular work order based on the availability of SBE firms. In addition, failure to meet the goal set by the District for an executed work order will result in a breach of contract by the Prime Contractor.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-07, 8-29-13, 12-9-20.

40E-7.671 District Implementation.

The District shall ensure all small businesses have the maximum opportunity to participate in the District’s contracting and procurement processes. The following are examples of efforts to be taken by the District:

- (1) Establish a Small Business Enterprise program to implement the rules established under this Part.
- (2) Identify all competitive contracting opportunities within the District budget for SBE participation.
- (3) Analyze SBE availability to provide the products or services identified for contracting at either the prime contract or subcontract levels.
- (4) Maintain a database of all SBEs.
- (5) Monitor and maintain records of steps taken and results achieved to maximize SBE participation.

(6) Monitor the District's efforts to achieve SBE objectives.

(7) Provide training to District staff on the District's SBE Rule.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-13.

40E-7.672 Compliance.

The District shall monitor and evaluate Program performance and compliance as follows:

(1) Each District contract shall contain a provision requiring the contractor, during the term of the contract, to comply with, as to tasks and proportionate dollar amounts throughout the term of the contract, all commitments made in their bids or proposals for use of SBEs.

(2) Each District contract shall contain a provision requiring maintenance of records, and information necessary to document compliance with the rules under this Part and shall include the right of the District to inspect such records.

(3) Each District contract shall contain a provision prohibiting any agreements between a contractor and a SBE in which the SBE promises not to provide subcontracting quotations to other respondents or potential respondents.

(4) Prime Contractors must notify the District when the need to add or replace an SBE subcontractor arises and shall provide a completed Form No. 1373, "Small Business Enterprise Subcontractor Revised Participation Schedule" effective (August 29, 2013) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-03067>), which contains an explanation of the addition or replacement of the SBE subcontractor. Form 1373 is incorporated by reference herein and a copy can be obtained at no cost by contacting the South Florida Water Management District Clerk's Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800)432-2045, ext. 6805, or (561)682-6805. In addition, a completed Form No. 0957, "Statement of Intent to Perform as a Small Business Enterprise Subcontractor," incorporated by reference in paragraph 40E-7.670(2)(a), F.A.C., must be submitted if applicable.

(5) Failure of the Prime Contractor to meet its SBE requirements in a District contract will be a factor considered by the District when the District makes its responsibility determinations for future District contract awards and when the District considers whether to place a contractor on the Temporary or Permanent Suspension List under Rule 40E-7.218, F.A.C.

(6) Each District contract awarded with SBE participation shall contain a provision incorporating the rules under this part by reference and a statement that failure to comply with the requirements of the bid or proposal submitted to the District by a contractor shall be considered a material breach of contract which may result in suspension or debarment of the firms or individuals involved pursuant to Chapter 40E-7, F.A.C.

(7) If an SBE Prime contractor is in material breach of its contract with the District, as defined in subsection 40E-7.215(5), F.A.C., the SBE Prime contractor shall be decertified.

(8) If an SBE subcontractor causes Prime Contractor to be in material breach of its contract with the District, as defined in subsection 40E-7.215(5), F.A.C., including, but not limited to, performance delay, the SBE subcontractor shall be decertified.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-13, 12-9-20.

40E-7.673 Certification Eligibility – Small Business Enterprise.

District staff shall have the authority to accept, review, approve, certify, decertify and deny applications for SBE Certification. Applicants must be registered with the District as a vendor prior to submitting an application for Certification.

(1) Applicants shall submit applications for SBE Certification using Form No. 1231, “SBE Certification Application”, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-12424>) effective August 3, 2006, which is incorporated by reference herein and is available at no cost by contacting the South Florida Water Management District Clerk’s Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800)432-2045, ext. 6805, or (561)682-6805.

(2) To establish SBE eligibility, the Applicant shall:

(a) Provide documentation to demonstrate that the 3-year average gross receipts of the Applicant, together with its Affiliate Business, does not exceed \$13 million for Construction, \$5 million for Commodities, and \$6 million for Services. In determining the gross receipts of the business and its Affiliate Business, the District shall consider the 3 federal tax returns filed by the Applicant for the 3 years immediately preceding application submittal. If 3 federal income tax returns have not been filed for the 3 years immediately preceding application submittal, then the Applicant must submit a financial statement for any of the 3 years immediately preceding the application in which the Applicant did not file a federal income tax return(s). The financial statement must be prepared by a Certified Public Accountant as defined by Section 473.301, F.S., not employed by the Applicant, but retained for the purpose of preparing financial statements for the Applicant. Applicants in business less than 1 year shall submit an opening balance sheet and income statement for the months in which it was in business. The opening balance sheet and income statement must be submitted on letterhead from the Applicant’s Certified Public Accountant.

(b) The Applicant must demonstrate that the business is licensed as required by law to do business in the State of Florida if the business requires a license.

(c) An Applicant shall have only 1 business certified with the South Florida Water Management District.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 12-9-20.

40E-7.674 Certification Review Procedures.

(1) Upon receipt by the District, all applications for SBE Certification shall be screened to ensure appropriate signature and completeness. The application must be signed by the individual with the authority to bind the Applicant.

(2) Within 60 days following receipt of the application, the District will request that the Applicant furnish omitted items or additional information, if any. All requested information must be received by the District within 60 days from the date of the request or the Applicant will be deemed ineligible for Certification. Applicants may however, re-apply.

(3) Applicants determined eligible shall receive Certification as an SBE from District staff. Once certified, Applicant shall remain certified for a period of 3 years. If the Applicant does not adhere to the District's SBE Program they will be subject to decertification. The District retains the right to re-evaluate the Certification of any business at any time.

(4) Applicants determined ineligible shall receive notification from the District. Ineligible Applicants shall not submit a new application for 180 days after District notification.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-07, 8-29-13, 12-9-20.

40E-7.675 Recertification Review Procedures.

(1) Applications for Recertification shall be submitted using Form No., 1232 "SBE Application for Recertification", effective August 3, 2006, (<http://www.flrules.org/Gateway/reference.asp?No=Ref-12423>), which is incorporated by reference herein and is available at no cost by contacting the South Florida Water Management District Clerk's Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800)432-2045, ext. 6805, or (561)682-6805.

(2) The District may notify SBEs no later than 60 days before the end of the Certification period that the SBE's Certification is about to expire. Regardless of notification, SBE is responsible to timely apply for Recertification. If the Recertification application document is no longer applicable because of changes to the Applicant SBE's business, the SBE shall notify the District in writing of the changes to its company before their existing certificate expires. The District shall determine if the company still complies with the Certification criteria set forth in Rule 40E-7.673, F.A.C. Recertification requests must be filed with the District no later than the last effective date of the current Certification period.

(3) Upon receipt, all Recertification requests shall be given an initial screening to ensure appropriate signature and completeness. Within 60 days following initial receipt of the Applicant's Recertification request, the District will request the applicant to furnish omitted or additional information. If the requested information or items are not received by the District within 60 days from the date of the request, the District will deny the application for Recertification.

(4) Recertification shall be granted when the Applicant has complied with recertification and

review procedures and substantiates continued eligibility for SBE status.

(5) Applicants deemed eligible shall receive a Recertification letter. The Applicant shall remain certified for a period of 3 years unless the SBE is decertified. The District retains the right to reevaluate the Certification of any SBE business at any time.

(6) Applicants determined ineligible for Recertification shall receive a letter citing which specific criteria of Rule 40E-7.673, F.A.C., that they failed to meet and advising that they shall not be eligible to submit new applications until 180 days after the date of the notice or the District's final agency order denying Recertification.

(7) If an application for Recertification is timely submitted, an SBE shall remain certified until the District has made a determination concerning eligibility.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-13, 12-9-20.

40E-7.676 Decertification.

The Decertification of an SBE shall occur when the District determines that an SBE no longer complies with the District's Certification criteria. The District will also Decertify an SBE if the District learns that the SBE submitted false information in order to obtain SBE Certification. The District may also decertify an SBE if the SBE materially breaches its contract with the District as defined in subsection 40E-7.215(5), F.A.C. Further, an SBE subcontractor will be decertified if it causes a Prime Contractor to materially breach its contract with the District as defined in subsection 40E-7.215(5), F.A.C., including, but not limited to, performance delay.

(1) District staff shall inform the SBE in writing by certified mail, return receipt requested, of the facts or conduct which formed the basis for Decertification.

(2) The Decertification notice issued by the District shall contain:

(a) The statutory provisions(s) or rules(s) of the Florida Administrative Code which the District alleges that the SBE violated; and

(b) The specific facts or conduct relied upon to justify the Decertification; and,

(c) A statement that the firm has the right to file a request for an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., within 21 days of receipt of the Decertification notice; and,

(d) A statement that the Decertification shall become conclusive and final agency action if no request for a hearing is filed with the District Clerk's office within 21 days from receipt of the Decertification notice.

(3) If the SBE fails to file a request for a hearing within 21 days after receipt of the notice, the Decertification shall become final agency action.

(4) If the SBE files a request for an administrative hearing, the SBE shall remain certified unless and until a Final Order is issued by the District Decertifying the SBE after an administrative hearing.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History–New 8-3-06, Amended 12-9-20.

40E-7.677 Reciprocity.

Reciprocal Certification shall be granted to an Applicant that is certified by another Florida government agency, provided that the agency has a small business program, including those owned by women and minorities. The Applicant shall provide the District with official documentation from the other governmental agencies stating the Certification and expiration dates. Once certified, Applicant shall remain certified with the District for a period of 3 years. The District reserves the right to request any additional documentation to verify or clarify the authentication of the information provided.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History–New 8-3-06, Amended 8-29-13, 12-9-20.

40E-7.678 Administrative Hearings.

If an Applicant believes it has been wrongly denied Certification or Recertification, or that it has been inappropriately Decertified as an SBE, it may file a request for hearing pursuant to Sections 120.569 and 120.57, F.S., by submitting a petition in accordance with Chapter 28-106, F.A.C., within 21 days of receipt of Notice of Denial of Certification or Recertification or Notice of Decertification as a District SBE.

Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History–New 8-3-06, Amended 12-9-20.