



# SMALL BUSINESS ENTERPRISE RULE

## CHAPTER 40E-7, F.A.C.



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Small Business Enterprise  
Procurement Bureau  
3301 Gun Club Road  
West Palm Beach, FL 33406  
561.682.6446  
[sbep@sfwmd.gov](mailto:sbep@sfwmd.gov)  
[SFWMD.gov](http://SFWMD.gov)

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**Effective August 3, 2006**

**Rule Amended August 29, 2007; August 29, 2013; December 9, 2020; and June 26, 2025**



#### **40E-7.668 Purpose and Implementation.**

(1) Rules 40E-7.668 through 40E-7.678, F.A.C., together with the materials incorporated by reference, implement the South Florida Water Management District's ("District") Small Business Enterprise ("SBE") Program ("Program") pursuant to section 373.1135, F.S.

(2) The Program establishes policies and procedures designed to help small business participate in the District's procurement and contract activities.

(3) Applicants must be registered with the District as a vendor prior to submitting an application for Certification, as defined in Rule 40E-7.669, F.A.C.

(4) Applicants shall submit applications for Certification/Recertification using Form No. 1231, "Small Business Enterprise Certification/Recertification Application" ("Application"), <http://flrules.org/Gateway/reference.asp?No=Ref-18104>, (June 26, 2025), which is incorporated by reference herein and is available at no cost by contacting the District's Small Business Enterprise ("SBE") Clerk's Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6446, or (561) 682-6446, or via email [sbep@sfwmd.gov](mailto:sbep@sfwmd.gov). The Application must be signed by the individual with the authority to bind the Applicant.

*Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History--New 8-3-06, Amended 12-9-20, 6-26-25.*

#### **40E-7.669 Definitions.**

(1) "Affiliate Business" is defined as an entity or entities that the Applicant controls or has the power to control, whether or not control is exercised; or an entity or entities that controls, or has the power to control the Applicant, whether or not control is exercised. "Control" means the power to direct or cause the direction of management or policies. In determining whether an affiliation exists, it is necessary to consider whether one entity impacts another by examining several factors, including, but not limited to, sharing resources, common ownership (direct or indirect), management, officers, directors, trustees, employees, and contract employees; common use of facilities, equipment, licenses, and contractual obligations; family interest in the Business; or a business entity organized by a debarred entity, individual, or affiliate following the debarment of a contractor that has the same or similar management, ownership, or principal employees as the contractor that was debarred or suspended. Affiliated entities shall be considered together in terms of Gross Receipts in determining whether a Business meets the Program's eligibility criteria.

(2) "Applicant" is defined as the Business that is seeking District Certification or Recertification.

(3) "Business" is defined as any entity which complies with all statutes and regulations; specifically, any corporation, limited liability company, partnership, general partnership, limited partnership, sole proprietor, or other for-profit entity, engaging in commerce, including, but not limited to, construction, commodities, or services.

(4) "Certification" or "Recertification" is the process by which the District determines that a Business meets the Program's criteria of a District SBE.

(5) “Commodity Code” is a numeric system or identifier designed to list commodities, tangible personal property (purchase or lease), or services by class and sub-class.

(6) “Decertification” is the process by which the District shall determine that a District SBE no longer complies with the Program’s Certification criteria.

(7) “District SBE” is defined as a Business certified by the District in either construction, commodities, services or a combination thereof whose three-year average Gross Receipts, including Affiliate Businesses, shall not exceed \$21 million if the Business provides construction, \$8 million if the Business provides commodities, and \$10 million if the Business provides services. A District SBE shall be registered and in good standing with the Florida Department of State Division of Corporations and holds the appropriate license(s) or certification(s) required by law to do business and perform work in the state of Florida.

(8) “Government Agency” is defined as any state, county, regional, or local government in Florida, including water management districts.

(9) “Gross Receipts” is defined as the total sales for the Applicant and its Affiliate Businesses from all sources during its annual accounting period before deductions for costs, expenses, returned items, allowances, and discounts as reflected in federal income tax returns or financial statements as set forth in paragraph 40E-7.673(2)(a), F.A.C.

(10) “Industry” is defined as construction, commodities, and services.

(11) “Non-Responsive” with respect to bidders, bids, or proposals is defined as a Business’s bid or proposal that does not conform in material respects to the invitation to bid or request for proposal including all SBE goals set forth.

(12) “Non-SBE Prime” is defined as a Business not currently certified has a District SBE 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.

(13) “Prime Contractor” is defined as 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.

(14) “Program Graduate” is defined as a District SBE that has exceeded the Program’s Gross Receipts eligibility requirement. Does not include District SBEs decertified for cause.

(15) “Reciprocal Certification” is defined as District Certification of an Applicant who is actively certified by another Florida Government Agency, provided that the agency has a small business program.

(16) “SBE Prime” is defined as a business certified by the District SBE that 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.

(17) “SBE Subcontractor” is defined as a District SBE having a direct contract with a Prime Contractor for performance of a portion of the work.

(18) “SBE Utilization Plan” details the type and percentage of work that will be performed for the specified project. The SBE Utilization Plan consists of Form No. 0956, “Small Business Enterprise Subcontractor Participation Schedule” (June 26, 2025) (<http://flrules.org/Gateway/reference.asp?No=Ref-18101>), which identifies all Businesses which will be utilized as subcontractors, and Form No. 0957, “Statement of Intent to Perform as a Small Business Enterprise Subcontractor” (June 26, 2025) (<http://flrules.org/Gateway/reference.asp?No=Ref-18102>), which is completed by all SBE Subcontractors detailed on Form No. 0956, and reflects the intent of the parties’ to establish a formal agreement conditioned upon the Non-SBE Prime’s execution of a contract with the District for said project. The SBE Utilization Plan is incorporated by reference herein and is available at no cost by contacting the District’s SBE Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800)432-2045, ext. 6446, or (561)682-6446, or via email [sbep@sfwmd.gov](mailto:sbep@sfwmd.gov).

*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, 6-26-25.*

#### **40E-7.670 Competitive Solicitation Preferences.**

The SBE Contracting Rule provides for two competitive solicitation preferences designed to assist District SBEs. Sheltered Market and Subcontracting Requirements are outlined below.

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

(2) Subcontracting Requirements. The District shall set SBE goals for all solicitations, unless otherwise provided in paragraph (2)(e). SBE goals are based on the availability of District SBEs in relation to all vendors registered with the District able to perform work within specific Commodity Codes.

(a) Bids – For solicitations where a contract is awarded based on price as the primary selection criteria, and where the scope is clearly defined, SBE goals shall be applied as a percentage of the total contract value to be assigned to District SBEs as provided in this subsection. 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 District SBEs in order to meet SBE the goal. At the time of submittal of its bid, the bidder shall submit an SBE Utilization Plan. The SBE Utilization Plan is incorporated by reference in subsection 40E-7.669(18), F.A.C. If the prime bidder is an SBE Prime, an SBE Utilization Plan is not required to be submitted with its bid. Failure to submit any of the information as required on the SBE Utilization Plan or to meet the established SBE goal shall lead to the bidder being deemed Non-Responsive.

(b) Standard Proposals – For solicitations where a contract is awarded based on evaluation criteria, and where the scope of work is clearly defined, the District shall determine SBE goals for each solicitation based on availability of District SBEs as provided in this subsection. The maximum SBE goal that will be applied to any solicitation will be 25%. At the time the proposal is submitted, the proposer shall submit an SBE Utilization Plan. The SBE Utilization Plan is incorporated by reference in subsection 40E-7.669(18), F.A.C. If the prime proposer is an SBE Prime, an SBE Utilization Plan is not required to be submitted with its proposal. Failure to

submit any of the information as required on the SBE Utilization Plan or to meet the established SBE goal shall lead to the proposer being deemed Non-Responsive.

(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. At the time the proposal is submitted, the proposer shall submit an SBE Utilization Plan. The SBE Utilization Plan is incorporated by reference in subsection 40E-7.669(18), F.A.C. If the prime proposer is an SBE Prime, an SBE Utilization Plan is not required to be submitted with its proposal. Failure to submit any of the information as required on the SBE Utilization Plan shall lead to the proposer being deemed Non-Responsive.

(d) Work Orders Issued – The SBE goal for individual work orders will be based on availability of District SBEs as provided in this subsection (2). The maximum SBE 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 SBE goal may exceed 25%. When a work order with an SBE goal is assigned, the Prime Contractor shall submit a cost proposal, and an SBE Utilization Plan. The SBE Utilization Plan is incorporated by reference in subsection 40E-7.669(18), F.A.C. If the Prime Contractor is a District SBE, an SBE Utilization Plan is not required to be submitted with its cost proposal. A work order will not be executed with a Prime Contractor whose cost proposal does not meet the established SBE goal for that work order. Failure to meet the SBE goal set by the District for an executed work order will result in a breach of contract by the Prime Contractor.

(e) The Procurement Bureau Chief or designee has the ability to grant a partial or complete waiver of any SBE goal whenever it is determined that such modification or waiver would be in the best interest of the District.

*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, 6-26-25.*

#### **40E-7.671 District Implementation.**

*Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-13, Repealed 6-26-25.*

#### **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 Prime 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 District SBEs.

(2) Each District contract shall contain a provision requiring the Prime Contractor and any of its Subcontractor's maintenance of records, and information necessary to document compliance with the rules herein 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 Prime Contractor and an 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” (June 26, 2025) (<https://flrules.org/Gateway/reference.asp?No=Ref-18103>), which contains an explanation of the addition or replacement of the SBE Subcontractor. Form No. 1373 is incorporated by reference herein and a copy can be obtained at no cost by contacting the District’s SBE Office, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6446, or (561) 682-6446, or via email [sbep@sfwmd.gov](mailto:sbep@sfwmd.gov). In addition, a completed Form No. 0957, “Statement of Intent to Perform as a Small Business Enterprise Subcontractor,” incorporated by reference in subsection 40E-7.669(18), 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 making its responsibility determinations for future contract awards and when considering whether to place a Prime Contractor on the Temporary or Permanent Suspension List under Rule 40E-7.218, F.A.C.

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

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

(8) If an SBE Subcontractor causes a 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, 6-26-25.*

#### **40E-7.673 Certification/Recertification Eligibility – Small Business Enterprise.**

District staff shall have the authority to accept, review, approve, certify, decertify and deny applications for Certification/Recertification, as defined in Rule 40E-7.669, F.A.C.

(1) Applicants shall submit the Application utilizing Form No. 1231, which is incorporated by reference in Rule 40E-7.668, F.A.C.

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

(a) Provide documentation to demonstrate that the three-year average Gross Receipts of the Applicant, together with its Affiliate Businesses, does not exceed \$21 million if the business provides Construction, \$8 million if the business provides Commodities, and \$10 million if the business provides Services. In determining the Gross Receipts of the Business and its Affiliate Businesses, the District shall consider the three federal income tax returns filed by the Applicant and its Affiliate Businesses for the three years immediately preceding Application submittal. If three federal income tax returns have not been filed for the three years immediately

preceding Application submittal, then the Applicant must submit financial statements (balance sheet and income statement) for any of the three years immediately preceding Application submittal in which the Applicant or its Affiliate Businesses did not file a federal income tax return(s). Applicants or its Affiliate Businesses in business less than one year shall submit financial statements for the months in which it was in business. Financial statements must be prepared by a Certified Public Accountant as defined by Section 473.301, F.S., not employed by the Applicant or its Affiliate Businesses, but retained for the purpose of preparing financial statements for the Applicant or its Affiliate Businesses. Financial statements must be submitted on letterhead from the Applicant's or its Affiliate Businesses' Certified Public Accountant.

(b) The Applicant must hold and provide the appropriate licenses(s) or certification(s) required by law to do business and perform work in the State of Florida. Licenses and certifications must be valid at the time of submittal and remain active throughout the Certifications period.

(c) Applicants must have the authority to conduct business in the State of Florida in accordance with the Florida Department of State Division of Corporations, including the use of Fictitious Names, if applicable. Applicants must remain in good standing throughout the Certification period.

(d) An Applicant shall have only one Business, including its Affiliate Businesses, certified with the District.

(3) An Applicant that has been debarred or suspended, or organized by an entity, individual, or Affiliate Business that has been debarred or suspended, is ineligible to be a District SBE.

*Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 12-9-20, 6-26-25.*

#### **40E-7.674 Certification/Recertification Review Procedures.**

(1) Upon receipt by the District, all Applications shall be given an initial screening to ensure appropriate signature and completeness. If an Application for Recertification is timely submitted, the District SBE shall remain certified until the District has made a determination concerning eligibility.

(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 Application will be deemed incomplete. Applicants may re-apply by submitting a new Application meeting Certification requirements detailed in Rule 40E-7.673 F.A.C.

(3) Applicants deemed eligible for Certification/Recertification shall receive a letter via email certifying them as a District SBE. The Applicant shall remain certified for a period of three years, unless decertified. If the Applicant does not adhere to the Program they will be subject to Decertification. The District retains the right to re-evaluate the Certification of any District SBE at any time.

(4) Applicants deemed ineligible for Certification/Recertification shall receive a letter via email 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 a new Application until 180 days after the date of the letter or the District's final agency order denying Certification/Recertification.

*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, 6-26-25.

#### **40E-7.675 Recertification Review Procedures.**

*Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 8-29-13, 12-9-20, Repealed 6-26-25.*

#### **40E-7.676 Decertification.**

(1) Decertification of a District SBE shall occur when:

(a) The District determines that the District SBE no longer complies with the Program's Certification criteria, including, but not limited to, Program graduation. Program Graduates may complete their work under all current District projects under their previous Certification status provided that the bid or proposal submission date of those projects occurred prior to the date of Program graduation; or,

(b) The District learns that the District SBE submitted false information to obtain Certification/Recertification; or,

(c) The District SBE Prime is in material breach of its contract with the District as defined in subsection 40E-7.215(5), F.A.C.; or,

(d) The SBE Subcontractor causes a Prime Contractor to be in material breach its contract with the District as defined in subsection 40E-7.215(5), F.A.C., including, but not limited to, performance delay.

(2) District staff shall inform the District SBE in writing via email of the facts or conduct which formed the basis for Decertification. The Decertification letter issued by the District shall contain:

(a) The statutory provision(s) or rule(s) of the Florida Administrative Code (F.A.C.) which the District alleges that the District SBE violated; and

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

(c) A statement that the Business has the right to file a request for an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., within 21 days after receipt of the Decertification letter; 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, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, FL 33406, (800) 432-2045, ext. 6805, or (561) 682-6805 within 21 days after receipt of the Decertification letter.

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

(4) If the District SBE files a request for an administrative hearing, they shall remain certified unless and until a Final Order is issued by the District decertifying the District 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, 6-26-25.*

#### **40E-7.677 Reciprocity.**

Reciprocal Certification shall be granted to an Applicant that is certified by another Florida Government Agency, provided that the Government Agency has a small business program. The Applicant shall provide the District with official documentation from the other Governmental Agencies stating the Certification and expiration dates. Once certified, the Applicant shall remain certified with the District for a period of three 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, 6-26-25.*

#### **40E-7.678 Administrative Hearings.**

If an Applicant believes it has been wrongly denied Certification/Recertification, or that it has been inappropriately decertified as a District 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 after receipt of the denial or Decertification letter.

*Rulemaking Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06, Amended 12-9-20, 6-26-25.*