

Notice of Proposed Rule

WATER MANAGEMENT DISTRICTS

South Florida Water Management District

RULE NO.: RULE TITLE:

[40E-7.669](#): Definitions

[40E-7.670](#): Competitive Solicitation Preferences

[40E-7.671](#): District Implementation

[40E-7.672](#): Compliance

[40E-7.674](#): Certification Review Procedures

[40E-7.675](#): Recertification Review Procedures

[40E-7.677](#): Reciprocity

PURPOSE AND EFFECT: As part of the continuing evaluation of the program required by the rule and in order to determine what specific provisions require modification, the Procurement Bureau has identified areas within the existing rule that necessitate an amendment.

SUMMARY: This amendment will allow greater access for small businesses to participate in the District's procurement and contracting activities. These areas include, but are not limited to: subcontracting requirements for proposals, compliance, and reciprocity of certification. Additionally, the proposed amendments will streamline business processes and make the program more effective.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND

LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely

increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein:

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: [373.044](#), [373.113 F.S.](#)

LAW IMPLEMENTED: [373.1135 F.S.](#)

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: July 11, 2013 at 9:00 am

PLACE: South Florida Water Management District - B-1 Headquarters (auditorium)

3301 Gun Club Road

West Palm Beach, FL 33406

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: South Florida Water Management District Clerk at (800) 432-2045 x2087 or (561) 682-2087.. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Dorothy Bradshaw, Bureau Chief Procurement, South Florida Water Management District, Post Office

Box 24680, West Palm Beach, FL 33416-4680, telephone 1-800-432-2045 x2823 or 561-682-2823, or by email to dbradsha@sfwmd.gov. For procedural questions, please contact Charron Follins Senior Paralegal, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1-800-432-2045 x6293 or 561-682-6293 or by email cfollins@sfwmd.gov.

THE FULL TEXT OF THE PROPOSED RULE IS: (highlighted text is new from previous version)

40E-7.669 Definitions.

(1) - (3) No change.

(4) "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.

(5) "Government Agency" means any state, county, regional or local government in Florida.

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

(7) (5) "Industry Categories" means construction, commodities and services.

(8) ~~(6)~~ "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.

(9) ~~(7)~~ "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.

(10) ~~(8)~~ "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.

(11) ~~(9)~~ "Responsive" means a business's bid or proposal conforms in all material respects to the invitation to bid or request for proposal.

(12) ~~(10)~~ "District Small Business Enterprise (SBE)" means a business certified by the District, whose three (3) year average gross receipts, including affiliates, 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. Additionally, a District Small Business Enterprise is licensed to do business in the State of Florida if the business requires a license.

(13) ~~(11)~~ "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 a 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.

*Specific Authority 373.044. 373.113 FS. Law Implemented 373.1135 FS. History-New 8-3-06.
Amended 8-29-07, Amended _____.*

40E-7.670 Competitive Solicitation Preferences.

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

(1) No Change.

(2) Sheltered Market Program. The District may ~~shall~~ provide for sheltered markets to allow ~~for~~ only SBE's to bid on designated solicitations. ~~The District shall be guided in designating a sheltered market by selecting industries in which small businesses have usually not had an opportunity to compete for awards against larger businesses.~~ In order to designate a sheltered market the District must identify at least 3 SBEs available to perform work within the industry identified in the solicitation.

(3) 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 goals shall be applied as a percentage of the total contract value to be assigned to SBE firms. Availability refers to vendors registered with the District, including SBE firms able to perform work within specific commodity codes. The formula for setting a goal is expressed as the total number of SBE firms within specific commodity codes in a scope of work divided by the total number of vendors registered with the District's Procurement Department~~

~~within the same commodity codes at the time of the preparation of the solicitation. Numerically, this is expressed as: Total Number of SBE's/Total Number of District Registered Vendors = Subcontracting Goal Percentage~~

The maximum 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 SBEs 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 SBE Subcontractor Participation Schedule" effective (August 3, 2006 _____) ([add hyperlink](#)). ~~which can be obtained from the District upon request.~~ All bids submitted where SBE participation is required, shall include Form No. 0957, "Statement of Intent to Perform as a Small Business Enterprise SBE Subcontractor" effective (August 3, 2006 _____) ([add hyperlink](#)). This form shall be signed by both the SBE subcontractor, ~~and the bidder and the form~~ Form Nos. 0956 and 0957, together called the SBE Subcontractor Utilization Plan, must ~~shall~~ 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 herein 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. 6436, or (561) 682-6436.

Any bidder failing to meet the established goal shall be deemed non-responsive. If an SBE Prime intends to subcontract work to an SBE subcontractor, the SBE Prime must submit the aforementioned forms at the time of submitting its bid or be deemed non-responsive. If the SBE

Prime intends to perform 100% of the work, the SBE Prime does not have to submit the aforementioned forms.

(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 Section 3(a) award points as reflected in Table 7.6-2. The maximum points will be awarded to the proposer if 25% or more of the total project work is performed by SBE firms. 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. Percentages reflect the amount of the total contract value proposed to be assigned to SBE firms.

TABLE 7.6-2

EVALUATION POINT TABLE

10 POINTS FOR SBE PARTICIPATION	
$\geq 25\% =$	10 Points
$\geq 23\% =$	9 Points
$\geq 21\% =$	8 Points
$\geq 19\% =$	7 Points
$\geq 17\% =$	6 Points
$\geq 15\% =$	5 Points

≥ 13% =	4 Points
≥ 11% =	3 Points
≥ 9% =	2 Points
≥ 7% =	1 Point

(e) 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 SBE Subcontractor Participation Schedule," incorporated by reference in paragraph (3)(a) herein. ~~from the District upon request.~~ All proposals with SBE subcontractor participation shall include Form No. 0957, "Statement of Intent to Perform as a Small Business Enterprise SBE Subcontractor," also incorporated by reference in paragraph (3)(a) herein. ~~from the District upon request.~~ This form shall be signed by the SBE subcontractor ~~and the proposer~~ and the form shall 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.~~ 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. If an SBE Prime intends to subcontract work to an SBE subcontractor, the SBE Prime must submit the aforementioned forms at the time of submitting its proposal. ~~Non-SBE Primes will not receive points if they choose not to use SBE subcontractors. The District will not provide SBE points to a proposer if the District cannot establish the proposer's intent.~~ Any non SBE Prime contractor who fails to meet the established goal shall be 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, will not contain a goal, but shall require proposers to commit to 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 stated above in paragraph 3(a). The maximum goal that will be applied to any work order will be 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 (3)(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 (3)(a) herein. This form 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. 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.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History-New 8-3-06, Amended 8-29-07, Amended _____.

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 ~~office~~ program to implement the rules established under this Part.

(2) - (5) No change.

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

(7) No change.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History-New8-3-06, Amended _____.

40E-7.672 Compliance.

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

(1) - (3) No change.

~~(4) The Prime Contractor shall advise the District of any situation in which regularly scheduled progress payments are not made to SBE subcontractors.~~

~~(4)~~ ~~(5)~~ Prime ~~e~~Contractors must notify the District when the need to add or replace an SBE subcontractor arises. ~~When a SBE substitution is requested, the Contract Specialist will request a letter from the contractor explaining why substitution is needed. The prime contractor and shall provide attach a completed Form No. 1373, "Small Business Enterprise Subcontractor R~~revised ~~P~~participation ~~S~~chedule" effective (_____)~~(add hyperlink), which~~

contains an explanation of the addition or substitution. 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. 6436, or (561) 682-6436. In addition, a completed Form No. 0957, "Statement of Intent to Perform as a Small Business Enterprise Subcontractor", incorporated by reference in 40E-7.670(3)(a), F.A.C., must be submitted if applicable ~~plan to the~~ letter.

(5) (a) Failure of a Prime Contractor to meet honor its the SBE requirements in a District of an awarded contract will shall 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. material breach of the contract which may result in suspension or debarment of the firms pursuant to Chapter 40E-7, Part II 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, ~~Part II~~ F.A.C.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History—New 8-3-06,

Amended _____.

40E-7.674 Certification Review Procedures.

(1) No change.

(2) Within sixty (60) ~~thirty (30)~~ days following receipt of the application, the District will request that the applicant business to furnish omitted items or additional information, if any. All requested information must be received by the District within sixty (60) ~~thirty (30)~~ days from the date of the request, or the applicant District will be deemed ineligible for certification. Applicants may re-apply. ~~return the unprocessed application to the applicant business.~~

(3) - (4) No change.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 F.S. History-New 8-3-06, Amended 8-29-07, Amended _____.

40E-7.675 Recertification Review Procedures.

(1) - (2) No change.

(3) Upon receipt, all recertification requests shall be given an initial screening to ensure appropriate signature and completeness. Within sixty (60) ~~thirty (30)~~ 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 sixty (60) ~~thirty (30)~~ days from the date of the request, the District will deny the application for recertification.

(4) - (7) No change.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History-New 8-3-06, Amended _____.

40E-7.677 Reciprocity.

Reciprocal ~~application~~ certification shall be granted to applicant businesses which ~~are~~ have been certified by other jurisdictions ~~that meet the District certification standards as outlined in this rule.~~ Florida Government Agencies provided that the agency has a small business program and that the applicant business is certified as a small business by that agency. Applicant shall provide the District with documentation that provides the certification and expiration dates. The District reserves the right to request any additional documentation to verify or clarify the authentication of the information provided.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.1135 FS. History-New 8-3-06, Amended _____.