

CHAPTER 2 MINORITY BUSINESSES

2.1 RELATED STATUTORY AUTHORITY

1. SC Code § 11-35-5210 sets forth the General Assembly's intention to assist minority businesses.
2. SC Code § 11-35-5240 requires each agency to develop an MBE Utilization Plan to emphasize the use of minority businesses and to submit quarterly and annual reports on the plan and its implementation.
3. SC Code § 11-35-5250 permits the Chief Procurement Officer to make special provisions for progress payments, letters of credit, and letters of contract award to assist minority businesses in obtaining appropriate credit and otherwise carry out the terms of a state contract.
4. SC Code § 11-35-5270 establishes the Small and Minority Business Assistance Office (SMBAO) to identify and assist responsive minority businesses.
5. SC Code § 12-6-3350 provides for a tax credit for contractors who subcontract with certified South Carolina based small minority businesses.
6. SC Regulation 19-445.2160 requires each agency to maintain records and submit reports to the SMBAO and the Board demonstrating implementation of the MBE Utilization Plan.

2.2 STATE POLICY – SC Code Ann § 11-35-5210

The South Carolina General Assembly has declared that business firms owned and operated by minority persons have been historically restricted from full participation in the free enterprise system to a degree disproportionate to other businesses. The General Assembly has further declared that it is in the State's best interest to assist minority-owned businesses to develop fully as a part of the State's policies and programs designed to promote balanced economic and community growth throughout the State. Therefore, it is the State's policy to ensure that agencies afford those businesses owned and operated by minorities the opportunity to fully participate in the overall procurement process of the State.

2.3 DEFINITIONS

SC Regulation 19-455.2160(A) provides definitions for the terms MINORITY PERSON, SOCIALLY DISADVANTAGED, ECONOMICALLY DISADVANTAGED, and SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS.

2.4 MINORITY BUSINESS ENTERPRISE (MBE) UTILIZATION PLAN - SC Code § 11-35-5240

Each Agency procuring construction must have a MBE Utilization Plan. The plan must include the following:

1. A policy statement expressing the client's commitment to use minority businesses in all aspects of procurement;
2. The name of the clients minority business liaison officer (must be a directorate staff level employee);
3. A description of liaison officer's duties including the responsibility to:
 - a) Develop, manage, and implement the MBE plan on a day-to-day basis;
 - b) Outline procedures to be used when it is determined feasible to divide larger projects into smaller tasks to allow MBE participation;
 - c) Develop instructions to prime contractors requiring them to address the use of certified minority business subcontractors;

- d) Establish and maintain a directory of certified minority businesses that wish to do business with the State;
- e) Disseminate information on available business opportunities to provide minority businesses equal opportunity to compete for professional services and construction contracts;
- f) Maintain reference files of federal and state organizations that provide assistance to minority business organizations and make files available to minority businesses;
- g) Establish and maintain records on the number of bid invitations and RFP's sent to and directed toward certified minority businesses, answers received, and contracts awarded when applicable to the Agency's dollar procurement limit; and
- h) Maintain records and submit progress reports to the Small and Minority Business Assistance Office.

In the development of MBE utilization plans, agencies must ascertain the total controllable procurement dollars budgeted for that particular fiscal year. Controllable procurement dollars include, but are not limited to, those anticipated expenditures for services, supplies, equipment, or construction that are not:

- 1. Currently under contract for the present fiscal year;
- 2. Covered by mandatory term contract;
- 3. Defined as sole source acquisitions;
- 4. Obligated to be awarded to the lowest responsive and responsible source;
- 5. Obligated for repayment of time-pay, lease-purchased equipment, or real property; or
- 6. Required by statute to be expended with a governmental body.

Once determined, the Agency must establish realistic goals, including a reasonable percentage, for procurements directed toward certified minority businesses.

2.5 CERTIFICATION OF MINORITY BUSINESSES

The Governor's Office of Small and Minority Business Assistance (SMBAO) can certify a business as a minority business. SMBAO will also certify the maximum dollar limit for which the business is eligible to contract. See SC Regulation 19-455.2160(B) through (E) for details on the certification process.

A minority business may contact SMBAO at the following address for the application procedure:

Governor's Office of Small and Minority Business Assistance
 1205 Pendleton Street, Suite 440-A
 Phone: (803) 734-0657
 Columbia, SC 29201
 Fax: (803) 734-2498

The SMBAO maintains a list of certified minority businesses providing construction and construction related professional services. The list is available to all agencies.

2.6 CONTRACTING WITH CERTIFIED MINORITY BUSINESS

A. PROFESSIONAL SERVICES: The Agency must procure all professional services in accordance with Chapter 4. Contracts for construction related professional services with fees \$25,000 or less may be directly negotiated with a certified minority business. An Agency may direct a contract for construction related professional services with fees exceeding \$25,000 towards certified minority businesses. The Agency must include the following statement in the advertisement: "This is a designated contract directed towards certified South Carolina based minority firms to satisfy the minority business enterprise goal of the Agency. However, this does not prevent other firms from submitting resumes for consideration."

B. CONSTRUCTION: An Agency may direct an entire construction contract towards certified minority businesses. The Agency must procure the contract in accordance with the requirements of the Procurement

Code and this manual. If the procurement requires advertisement, then the Agency must include the following statement in the advertisement: "This is a designated contract directed towards certified South Carolina based minority firms to satisfy the MINORITY BUSINESS goal of the Agency. However, this does not prevent other firms from bidding on this project."

An Agency may direct all bidders to address the use of certified minority businesses as subcontractors. The Agency should provide specific instructions in the bid documents and the advertisement on how to comply with the requirement. The Agency may declare a bid non-responsive for failure to address the use of minority business subcontractors as instructed.

2.7 BONDING OF SMALL AND MINORITY BUSINESS ENTERPRISES

The State requires bid, payment, and performance bonds on all construction projects in excess of \$50,000. The State does not require bid bonds on projects of \$50,000 or less. Agencies may choose to forgo payment and performance bonds on projects of \$50,000 or less provided they have taken steps to protect the interests of the State by other means.

2.8 SBA SURETY BOND GUARANTEE PROGRAM

The Small Business Administration's Surety Bond Guarantee Program provides guarantees on bonds up to a maximum of \$2 million for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. The SBA program guarantees from 70 percent to 90 percent of losses incurred by surety companies, in the event of a contractor's default, on contracts not exceeding \$2 million. More information on this program is available from SBA Office of Surety Guarantee's Web site (<http://www.sba.gov/aboutsba/sbaprograms/osg/index.html>) or from any SBA office.

2.9 INCOME TAX CREDIT

A contractor who awards a subcontract to a certified South Carolina-based minority business is eligible for a credit of 4% of payments made to the minority subcontractor up to \$50,000 annually or the amount of the tax liability, whichever is less. A contractor is eligible for the income tax credit for 10 taxable years beginning with the taxable year in which the contractor first claims the credit. Contractors should contact the Department of Revenue for the latest information on the extent of this credit. <Http://www.sctax.org/default.htm>

2.10 PROGRESS PAYMENTS FOR CONSTRUCTION RELATED SERVICES

An Agency may provide for progress payments in its construction contracts. If an Agency does so, it must also provide for retaining a certain percentage of the contractor's proceeds until project completion. However, the Agency cannot retain more than 3-1/2%. If the minority business requests a release of the retainage in a progress payment and the Agency determines that the business is achieving satisfactory progress, the Agency may authorize payment of the retainage in addition to the progress payment.

2.11 LETTERS OF CONTRACT AWARD

If, after receiving an award for a state contract, a minority business requests a letter of contract award, the State Engineer or the Agency's procurement officer must furnish a letter stating the dollar value, duration, payment schedule, and other information concerning the contract to the minority business.

2.12 REQUIRMENTS OF STANDARD FORM CONTRACTS

To assist the Agency in meeting its MBE utilization goals, each standard form contract that includes construction services includes an MBE reporting requirement. This reporting requirement requires the contractor to provide the Agency with a report listing every MBE (whether certified by the state or not) with which it contracts to provide labor, material, or equipment to the project and to provide the name of the certifying entity, i.e. state, or federal government.