

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. **Affiliate or subsidiary of a business dominant in its field of operation.**

A. "Affiliate or subsidiary of a business dominant in its field of operation" means a business that is at least 20 percent owned by a business dominant in its field of operation or by partners, officers, directors, majority stockholders, or their equivalent of a business dominant in that field of operation.

B. "Dominant in its field of operation" means exceeding the annual gross revenues or sales specified in part 1230.1600, subpart 3.

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 Materials Management Division or a Materials Management Division manager with written delegation of authority from the director.

Subp. 9. **Division.** "Division" means Materials Management Division, Department of Administration, Room 112, State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.

Subp. 10. **Franchise.** "Franchise" means an operating agreement obtained from a franchiser to conduct a business entity, as an affiliate, 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 part 1230.1700, subparts 5, item C, and 5a, items A to F.

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 groups or economically disadvantaged area 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. 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 primary physical location at which or from which a business performs, is maintained, or operates.

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. 21. **SIC or Standard Industrial Classification and NAICS or North American Industry Classification System.** "SIC" or "standard industrial classification" and "NAICS" or "North American Industry Classification System" are systems 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. 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 materials management 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 businesses.** "Targeted group businesses" 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 and provide goods, products, or services within purchasing categories designated by the commissioner.

Subp. 24. **Terms governing socially disadvantaged persons.** The terms in items A to C have the meanings given them for purposes of administering the small business procurement program.

A. "Racial minority" means an individual in one or more of the categories in subitems (1) to (5).

(1) "Black American" means persons having origins in any of the Black racial groups of Africa.

(2) "Hispanic American" means persons having origins in Mexico, Puerto Rico, Cuba, Central or South America, or other Spanish culture, regardless of race.

(3) "Asian Pacific American" means persons having origins in Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, the Philippines, the United States Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated states of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru.

(4) "Subcontinent Asian American" means persons having origins in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal.

(5) "Indigenous American" means:

(a) Eskimos and Aleuts having origins in any of the original people of North America who maintain cultural affiliation through tribal or community affiliation;

(b) native Hawaiians whose ancestors were natives, prior to 1778, of the area which now comprises the state of Hawaii; and

(c) American Indians having origins in any of the original people of North America who are enrolled members of Indian tribes recognized by the governments of the United States and Canada.

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.

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 disadvantaged business or economically disadvantaged area business.** "Small business eligible for certification as socially disadvantaged business or economically disadvantaged area 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. 27. **Vendor.** "Vendor" means a natural person or a business and includes both if the natural person is engaged in a business.

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*

Published Electronically: *January 14, 2005*