

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 135.00: MONITORING OF PROJECT CONSTRUCTION AND LICENSEE REQUIREMENTS

Section

- 135.01: Definitions
- 135.02: Project Schedules and Reporting
- 135.03: Design Review Process
- 135.04: Inspection of Construction and Related Records
- 135.05: Certification of Final Stage of Construction: Category 1 Gaming Establishments
- 135.06: Determination That Gaming Establishment May Open for Business

135.01: Definitions

Minority Business Enterprise (MBE). A minority owned business that has been certified by either the Massachusetts Supplier Diversity Office, the Greater New England Minority Supplier Development Council, or both.

Project. The gaming establishment as approved by the commission and defined in the gaming license awarded by the commission. For purposes of 205 CMR 135.00, Project may also include such off-site infrastructure necessary for the operation of the gaming establishment as required by the commission.

Small Business. An entity, including all of its affiliates combined that:

- (a) Has its principal place of business in Massachusetts;
- (b) Employs a combined total at all locations of 50 or fewer full-time employees;
- (c) Has been in business at least one year; and
- (d) Has gross revenues of \$15 million or less based on a three-year average, and meets all legal obligations for tax status and required registration in the Commonwealth.

Veteran's Business Enterprise (VBE). A Veteran Business Enterprise shall have the same meaning as the term "Veteran-owned small business concern" as defined by 38 CFR 74.1, whose status can be verified by Vendor Information Pages on the U.S. Department of Veterans Affairs Office of Small & Disadvantaged Business Utilization website or by the Licensing Division of the Massachusetts Gaming Commission. Veteran's Business Enterprise is inclusive of the Service-disabled veteran-owned business as defined in 15 USC § 632. Additionally, the term VBE shall include any entity certified as a VBE, as defined by M.G.L. c. 7, § 58, by the supplier diversity office within the operational services division pursuant to regulations promulgated in accordance with M.G.L. c. 7, § 61(a).

Notwithstanding the foregoing, for purposes of 205 CMR 135.02(8) and 139.04(3), effective upon the issuance of an operation certificate to a gaming licensee, the term VBE shall only include those entities certified as such by the supplier diversity office, or verified with the U.S. Department of Veterans Affairs. (Note: vendors previously verified by the Licensing Division will continue to be recognized until the end of their existing contract.)

Women's Business Enterprise (WBE). A women-owned business that has been certified by either the Massachusetts Supplier Diversity Office, the Women's Business Enterprise National Council or both.

135.02: Project Schedules and Reporting

- (1) The commission may create guidelines under 205 CMR 135.00 to aid the commission in its review and monitoring of the project. Such guidelines will be shared with the licensee and may be amended as necessary by the commission.
- (2) The commission shall, in accordance with M.G.L. c. 23K, §§ 10 and 11 approve for each gaming licensee, a project schedule for the gaming licensee's capital investment in its gaming establishment and related infrastructure which includes:
  - (a) all major stages of design and construction; including all permitting and approvals, design deliverables, site preparation, foundation, structure, plumbing, electrical, mechanical, exterior finish and fenestration, long lead items, insulation, interior finish and furnishings and landscaping, building commissioning and commissioning of gaming equipment and information technology systems.

135.02: continued

- (b) For a Category 1 gaming establishment, a timeline for commencement of the final stage of construction pursuant to M.G.L. c. 23K, § 10(a); and
- (c) a timeline for the stage of construction at which the gaming licensee shall be approved to open for business or operate a slot machine pursuant to M.G.L. c. 23K, §§ 10(c) and 11(a).

(3) Within the time frame provided in the award of the gaming license, the licensee shall provide to the commission for commission approval an affirmative action program of equal opportunity whereby the licensee establishes specific goals for the utilization of minorities, women and veterans on construction jobs and for contracting with minority, women or veteran owned businesses during either design or construction; provided, however that such goals shall be equal to or greater than the goals contained in Executive Office of Administration and Finance Administrative Bulletin Number 14.

(4) If unforeseen and/or changed circumstances necessitate a change to a project schedule approved pursuant to 205 CMR 135.02(2) which will impact the completion date or requires a major change in the method or progress of construction, the gaming licensee may submit to the commission for its approval a revised project schedule, with a detailed statement of the unforeseen changed circumstances which justify the revised project schedule. If the commission approves such revised project schedule, it shall substitute and supersede the previously approved project schedule.

(5) To ensure adherence to the project schedule approved pursuant to 205 CMR 135.02(2) or (4), the gaming licensee shall submit to the commission in a media, format and level of detail acceptable to the commission, quarterly a status report including:

- (a) the total estimated cost of construction of the project and related infrastructure improvements, including a sworn certification regarding costs incurred pursuant to 205 CMR 122.03: *Costs Included in the Calculation of Capital Investment*, and separately identifying detailed costs for design, land acquisition, site preparation and construction and off-site improvements;
- (b) a sworn certification regarding the capitalization of the gaming licensee, sufficient for the commission to determine, pursuant to M.G.L. c. 23K, § 10(e) or 11(c), that the gaming licensee has adequate funds to complete the gaming establishment and related infrastructure improvements;
- (c) a copy of all design and construction contracts executed within the prior quarter by the gaming licensee to design and construct the gaming establishment and related infrastructure improvements;
- (d) a status report reflecting the progress of construction and certifying compliance with the approved project schedule for major stages of construction. In the event that the progress of construction does not comply with the project schedule approved pursuant to 205 CMR 135.02, the licensee shall submit a detailed plan to bring the progress of construction into compliance with the approved project schedule or submit a request for a revised project schedule pursuant to 205 CMR 135.02(4); and
- (e) a detailed statistical report pursuant to M.G.L. c. 23K, § 21(a)(23) on the number, gender and race, and veteran status of individuals by job classifications hired to perform labor as part of the construction of the gaming establishment and related infrastructure, and a comparison of this report with the goals established by the gaming licensee and commission pursuant to M.G.L. c. 23K, § 21(a)(22). In the event the hiring of the aforementioned persons does not comply with the goals established, the licensee shall submit within 20 days of a request by the commission a response as to why the goals have not been achieved, identify any good faith efforts that have been undertaken to achieve those goals and provide a plan to bring the hiring into compliance with the goals.
- (f) a report describing the number of contracts, total dollar amounts contracted with and actually paid to minority business enterprises, women business enterprises and veteran business enterprises for design and construction of the gaming establishment and related infrastructure, and the total number and value of all subcontracts awarded to a minority, women and veteran owned business, and a comparison of these reports with the goals established by the gaming licensee and commission pursuant to M.G.L. c. 23K, § 21(a)(21). In the event the licensee's hiring of the aforementioned entities does not comply with the goals established the licensee shall submit within 20 days of a request by the commission a response as to why the goals have not been achieved, identify any good faith efforts that have been undertaken to achieve those goals and provide a plan to bring the the dollar amount contracted and spent into compliance with the goals.

## 135.02: continued

(6) The licensee shall have a continuing obligation, pursuant to 205 CMR 120.01(2) to timely provide to the commission an updated permits chart and all documents and information listed in 205 CMR 120.01: *Permitting Requirements*, as well as any updates to the MEP A process such that the commission is continuously apprised of all material developments with respect to all permits and approvals required for the gaming establishment. Pursuant to 205 CMR 120.01(1)(h) the licensee shall provide to the commission copies of any appeal within 20 days of filing, whether to a municipal or state entity or for judicial review, filed with respect to any permit of approval listed in 205 CMR 120.01(1) along with a copy of the docket sheet and each decision on any appeal.

(7) In furtherance of specific goals for the utilization of minorities, women and veterans on construction jobs, the licensee shall send and provide a copy to the commission, to each labor union or representative of workers with which the licensee has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers representative of the licensee's commitments pursuant to M.G.L. c. 23K § (15) and §§ 21(a)(21) and (22).

(8) Prior to the gaming establishment opening for business, in furtherance of specific goals for the utilization of minority business enterprises, women business enterprises and veteran business enterprises as vendors in the provision of goods and services to the gaming establishment, the licensee shall provide to the commission an affirmative marketing plan in which the licensee identifies specific goals, expressed as an overall program goal applicable to the total dollar value of contracts entered into, for the utilization of minority business enterprises, women business enterprises and veteran business enterprises to participate as vendors in the provision of goods and services procured by the gaming establishment and any businesses operated as part of the gaming establishment; provided, however, that the specific goals for the utilization of such minority business enterprises, women business enterprises and veteran business enterprises shall be based on the availability of such minority business enterprises, women business enterprises and veteran business enterprises engaged in the type of work to be contracted by the gaming licensee.

135.03 Design Review Process

(1) The commission or its representative may participate in the design review process for the design of the project. This process may run in parallel to the local, state and federal review process and may include all elements of the project, including but not limited to the gaming establishment and any amenities approved by the commission, whether constructed together or in phases, as well as any off-site improvements. The commission may participate in the following key milestones of the design review process:

- (a) development of initial concept;
- (b) development of the schematic design;
- (c) completion of the final site plan and architectural design; and
- (d) development of the construction design package.

(2) As part of the development of the initial concept, the commission may request a narrative describing the project and stipulating the basis for the design. The narrative should include a pictorial representation of the project design concept and a narrative description of the project.

(3) When the licensee has completed the schematic design phase, the commission may request that the licensee submit the schematic design to the commission or its representative for review. Such schematic design may include descriptions of the external facade of any structures that are part of the project, all the major systems, a floor plan and any off site infrastructure improvements planned by licensee. The commission or its representative may request, where available, examples of materials to be used in the building facade,

(4) The commission or its representative may request for review and approval the final site plan and architectural design package. Such final design package shall be in the form ready for licensee's use in creating construction bid packages. Where available, the commission or its representative may request examples of materials to be used on the exterior or in the interior of the project as well as examples of the furniture and fixtures to be used in the project.

135.03: continued

- (5) The commission's representative may request construction packages for review prior to putting such construction packages out for bid.

135.04: Inspection of Construction and Related Records

- (1) At all times the commission or its representative may physically inspect the progress of construction, subject to reasonable construction site safety rules, to determine the gaming licensee's compliance with the approved design, project schedule, the terms and conditions of the license, M.G.L. c. 23K, or 205 CMR
- (2) The commission may request or have access to, at any time, plans, specifications, submittals, contracts, financing documents or other records concerning the construction of the project or related infrastructure. The licensee shall provide the requested materials to the commission or its representative within ten days of the commission's request for such documents.
- (3) Following an inspection of construction pursuant to 205 CMR 135.04(1) or review of records pursuant to 205 CMR 135.04(2), the commission or its representative may notify the gaming licensee of any non-compliance with the terms of the license, including non-compliance with an approved design or project schedule pursuant to 205 CMR 135.02(2) or (4). Upon receipt of such notification, the gaming licensee shall present a plan to the commission to address such non-compliance to the satisfaction of the commission.

135.05: Certification of Final Stage of Construction: Category 1 Gaming Establishments

- (1) Pursuant to M.G.L. c. 23K, § 10(a), the gaming licensee shall certify to the commission that it has reached the final stage of construction as described in the approved project schedule pursuant to 205 CMR 135.02(2), or an approved revised project schedule pursuant to 205 CMR 135.02(4).
- (2) Upon receipt of such certification, the commission or its representative may inspect the construction pursuant to 205 CMR 135.04(1), and request relevant plans, contracts, financing documents or additional records pursuant to 205 CMR 135.04(2).
- (3) If the commission approves the gaming licensee's certification pursuant to 205 CMR 135.05(1) that the gaming licensee has reached the final stage of construction, it shall return to the gaming licensee the deposit or release the deposit bond described in M.G.L. c. 23K, § 10(a), and permit the gaming licensee to apply the deposit to the cost of the final stage of construction.
- (4) If the commission disapproves the gaming licensee's certification pursuant to 205 CMR 135.05(1), the commission will notify the gaming licensee of the reasons for such disapproval, and the gaming licensee shall proceed diligently to cure the reasons for the disapproval.

135.06: Determination That Gaming Establishment May Open for Business

- (1) The commission may not approve a Category 2 gaming establishment to open for business, begin gaming operations or operate a slot machine at a gaming establishment until the commission has:
  - (a) determined that the gaming licensee has complied with the conditions in 205 CMR 135.00
  - (b) had an adequate opportunity to physically inspect the completed gaming establishment and related infrastructure, as well as relevant plans, contracts, or other records, to determine that the completed gaming establishment and related infrastructure comply with:
    1. the terms of the license;
    2. M.G.L. c. 23K, and 205 CMR;
    3. host and surrounding community agreements pursuant to M.G.L. c. 23K, §§ 15 and 17;
    4. impacted live entertainment venue agreements pursuant to M.G.L. c. 23K, § 17; and
    5. certificates of occupancy permits and approvals issued in connection with the gaming establishment.

135.06: continued

- ©) issued an operations certificate for the gaming establishment pursuant to M.G.L. c. 23K, § 25.
- (2) Pursuant to M.G.L. c. 23K, § 10(c), the commission shall not make a determination that a Category 1 gaming establishment is approved to open for business until the commission has:
- (a) determined that the gaming licensee has complied with the conditions in 205 CMR 135.00;
  - (b) determined that the gaming licensee has completed the permanent gaming area and other ancillary entertainment services and non-gaming amenities;
  - ©) determined that the gaming licensee has completed all infrastructure improvements on and off site and around the vicinity of the gaming establishment, including projects to account for traffic mitigation required by the gaming license or any other approval obtained by the gaming licensee in connection with the gaming establishment.
  - (d) had an adequate opportunity to physically inspect or have the commission's representative inspect the completed gaming establishment and related infrastructure, as well as relevant plans, contracts, or other records, to determine that the completed gaming establishment and related infrastructure comply with:
    - 1. the terms of the license;
    - 2. M.G.L. c. 23K, and 205 CMR;
    - 3. host' and surrounding community agreements pursuant to M.G.L. c. 23K, §§ 15 and 17;
    - 4 impacted live entertainment-venue agreements pursuant to M.G.L. c. 23K, § 17; and
    - 5. certificates of occupancy permits and approvals issued in connection with the gaming establishment.
  - (e) issued an operations certificate for the gaming establishment pursuant to M.G.L. c. 23K, § 25.
- (3) Pursuant to M.G.L. c. 23K, § 10(b), a Category I gaming licensee who fails to receive approval from the commission to open its gaming establishment for business within one year after the date specified in its approved project schedule pursuant to 205 CMR 135:02(2) or its revised, approved design and project schedule pursuant to 205 CMR 135.02(4) shall be subject to suspension or revocation of its gaming license by the commission and may, if the commission determines that the gaming licensee acted in bad faith in its application, be assessed a fine of \$50,000,000 or less.
- (4) The commission may find that a Category 1 or Category 2 gaming licensee who fails to comply with an approved design or construction project schedule pursuant to 205 CMR 135.02(2) or (4):
- (a) has breached a condition of licensure pursuant to M.G.L. c. 23K, § 23(b)(iii);
  - (b) is no longer capable of maintaining operations at a gaming establishment pursuant to M.G.L. c. 23K, § 23(b)(v);
  - (c) or is maintaining a business practice that is injurious to the policy objectives of M.G.L. c. 23K pursuant to M.G.L. c. 23K, § 23(b)(vi).
- (5) The commission may condition, suspend or revoke a gaming license upon making a finding pursuant to 205 CMR 135.05(4), 135.06(3) or (4) or M.G.L. c. 23K, § 23(b).

#### REGULATORY AUTHORITY

205 CMR 135.00: M.G.L. c. 23K, §§ 4, 5 10, 11, 15, 17, 18, 21, 23, and 25.