

Business Participation - Frequently Asked Questions

Glossary

Business participation goals: Business participation goals are targets for the utilization of certain businesses on a particular project.

There are separate, disaggregated business participation goals for Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), Veteran Business Enterprises (VBEs), and Service-Disabled Veteran-Owned Business Enterprises (SDVOBES).

To count towards participation goals, a business must be certified as an MBE, a WBE, or a VBE/SDVOBE by the Massachusetts Supplier Diversity Office (SDO). Through the certification process, the SDO or one of its third-party certification partners verifies that the firm is at least 51% owned and controlled by eligible individuals.

A list of certified firms is available on the [SDO's Certified Business Directory](#).

Disparity study: A study to determine whether a government entity, either in the past or currently, engages in exclusionary practices in the solicitation and award of contracts to minority, women-owned, and disadvantaged business enterprises. The primary goal of the study is to assess, quantify, and evaluate the prevalence, significance (degree and weight), and scope of discrimination in the marketplace. In a case filed in the U.S. Supreme Court in 1989, it was ruled that governments must establish a “compelling interest” to support the creation of contracting programs that specifically target minority- and/or women-owned businesses. The Commonwealth’s current [study was commissioned by the Commonwealth’s Division of Capital Asset Management and Maintenance](#).

Minority Business Enterprise (MBE): This is a certification by the SDO for a business enterprise that is owned and controlled fifty-one percent (51%) by one or more members of a minority group who have invested in an ongoing business free of conversion rights. Minorities include people who are Indian or Indigenous, Asian, Black, or Hispanic. To receive SDO certification, businesses must meet the certification criteria set forth in [425 CMR 2.00 et seq.](#)

Service-Disabled Veteran-Owned Business Enterprise (SDVOBE): An SDVOBE can be certified by the US Small Business Administration (SBA) as a service-disabled veteran-owned small business or be certified as such by DISABILITY:IN. A business can then apply to the SDO for recognition of that certification in Massachusetts. Both VBE and SDVOBE certifications count towards the same goal on state and state-assisted building projects.

The Hub: The Hub is an online platform that OPMs can use to manage their supplier diversity efforts and to connect directly with diverse and small businesses.

Vertical project: Here, “vertical project” is shorthand for “the planning, acquisition, design, construction, demolition, installation, repair or maintenance of a capital facility.” See M.G.L. c. 7C § 6(b).

Veteran Business Enterprise (VBE): VBE is a certification by the SDO for a business enterprise that is owned and controlled by one or more veterans, as defined in General Laws c. 4 § 7, who have invested in an ongoing business free of conversion rights. To receive SDO certification, businesses must meet the certification criteria set forth in [425 CMR 2.00 et seq](#). SDO provides certification for VBEs, but will also accept third party certifications by the US Small Business Administration (SBA) or the National Veteran Owned Business Association (NaVOBA). Both VBE and SDVOBE certifications count towards the same goal on state and state-assisted building projects.

Women Business Enterprise (WBE): This is a certification by the SDO for a business enterprise that is owned and controlled fifty-one percent (51%) by one or more women who have invested in an ongoing business free of conversion rights. To receive SDO certification, businesses must meet the certification criteria set forth in [425 CMR 2.00 et seq](#).

Frequently Asked Questions

How do business participation goals differ from workforce participation goals?

Business participation goals are for the use of companies with certain ownership, while workforce participation goals refer to the makeup of the contractors' workforce. These two requirements are independent of one another.

What is the purpose of business participation goals?

The purpose of business participation goals is to ensure a level playing field and participation opportunities for businesses owned and operated by socially and economically disadvantaged individuals. Such businesses have historically been, and currently remain, underutilized relative to their ability and willingness to perform work, as documented in a [disparity study conducted by the Division of Capital Asset Maintenance and Management](#).

To what projects do the business participation goals apply?

The business participation goals apply to both state-administered building projects and state-assisted building projects. A state-administered building project is a vertical design or vertical construction project for which the Commonwealth of Massachusetts is the owner or beneficial user. A state-assisted building project is a vertical design or vertical construction project that is (a) undertaken by a political subdivision and (b) for which the Commonwealth has provided financial support, either in whole or in part.

Is there a dollar threshold?

Yes, state-assisted building projects are subject to mandatory business participation goals only when the estimated cost is \$150,000.00 or more. When the estimated cost is below that threshold, the owner may reduce, increase, or waive the business participation goals without consulting the SDO.



Who is responsible for the business participation goals?

The awarding authority is responsible for ensuring that the goals are included in the contract. The designer or constructor is responsible for meeting the goals and ensuring compliance by subcontractors and suppliers.

Are the business participation goals the same for all projects? Are they different for each project?

On state-assisted building projects, the business participation goals for WBEs and MBEs are set on a project-specific basis, to account for the relative availability of firms in the scopes of work needed for the project. The VBE/SDVOBE goal is 3.0% for all projects.

Will the business participation goals for the design of a project be identical to the business participation goals for the construction of that same project?

No. The business participation goals for the design phase are calculated independently of the business participation goals for the construction phase.

For the purposes of the business participation goal, does a contract with a supplier count for the same as a contract with a subcontractor?

No. For the purposes of the business participation goal, spending with a supplier is calculated at 60% of the total value of the supplies that the supplier provided. Put differently, a purchase order with a supplier is calculated towards the participation goal at a rate of 60 cents for each dollar. If an MBE, WBE, and/or VBE/SDVOBE supplies, but does not install equipment or materials, the MBE, WBE, and/or VBE/SDVOBE participation credit shall be given only if the MBE, WBE, and/or VBE/SDVOBE supplier is regularly engaged in sales of equipment or supplies to the construction industry from an established place of business.

For the purposes of the business participation goal, does a contract with a manufacturer count for the same as a contract with a supplier?

No. If an MBE, WBE, and/or VBE/SDVOBE supplier is the manufacturer, it is eligible for full participation credit, rather than the 60% rate for suppliers. That supplier-manufacturer must manufacture the goods or substantially alter the goods before resale.

Does a contract with a broker or wholesaler count towards the business participation goal?

No. A supplier must warehouse its materials or supplies. Spending with brokers and/or wholesalers cannot be counted towards the total dollar value of business participation.

How are the business participation goals set?

For all projects, the VBE/SDVOBE goal is set at 3.0%.

The WBE goal and the MBE goal are set independently of one another and are calculated uniquely for each project, based on a disparity study conducted by the Division of Capital Asset Maintenance and Management (DCAMM). That calculation is based on the availability of women-owned firms and minority-owned firms, respectively, in relation to the amount of work needed for each trade and specialty on the project.



What is the SDO's role?

The SDO sets the project-specific WBE goal and the project-specific MBE goal for each state-assisted building project estimated to cost \$150,000.00 or more.

Is there specific language to include in the bid documents?

Yes. That language is available in Attachments B, C, and D of the SDO's program guidelines, which are available here: [State-Funded Municipal Construction General Guidelines](#)

How do I request the business participation goals for my project?

The awarding authority, through its OPM, if appropriate, requests the goals from the SDO. That process is outlined here: [Request Goals for a Design or Construction Project](#)

Can I get a waiver for my project?

Waivers may be issued by the SDO's Executive Director on an extremely limited basis. Requests for waivers must be submitted in writing by the awarding authority. No other action or inaction by the awarding authority shall be construed as a waiver of any provision of the requirements.

Can I have the goals reduced for my project?

The awarding authority may file a written request for the adjustment of business participation goals. That process is more fully described on pages 5 and 6 here: [State-Funded Municipal Construction General Guidelines](#)

Prime contractors may file a written request for the adjustment of business participation goals. That process is more fully described on pages 7–10 here: [State-Funded Municipal Construction General Guidelines](#)

Will the goals be reevaluated over the life of the project?

No. The goals will be the original project-specific goals created for the life of the contract.

What do the prime contractors need to submit at the time of bid?

The SDO does not require that prime contractors submit anything at the time of bid. The awarding authority may institute additional requirements; refer to the bid documents of the specific project and/or consult the awarding authority.

What do the filed sub-bidders need to submit at the time of bid?

A filed sub-bidder should submit a Letter of Intent with its bid, if it is an SDO-certified MBE, WBE, VBE, or SDVOBE. If a filed sub-bidder intends to sub-subcontract work to an SDO-certified MBE, WBE, VBE, or SDVOBE, and the awarding authority permits limited sub-subcontracting for purposes of MBE, WBE, and/or VBE/SDVOBE participation, and the filed sub-bidder wishes that sub-subcontract to be credited toward the participation goals for the project, the filed sub-bidder must submit, with the filed sub-bidder's bid, a Letter of Intent from that MBE, WBE, VBE, or SDVOBE.

If the filed sub-bidder is submitting a Letter of Intent, it must also submit a Schedule for Participation.

What is the Schedule for Participation (SFP)?

The Schedule for Participation is a form that serves to declare the contractor's project-specific commitments to MBEs, WBEs, VBEs, and/or SDVOBEs.

The prime contractor must list the company name, address, certification type, scope(s) of work, and total value of participation credit for each SDO-certified firm.

The subcontractor to the prime contractor must submit a Schedule for Participation **if** the subcontractor is either (a) an SDO-certified MBE, WBE, VBE, or SDVOBE or (b) using an SDO-certified MBE, WBE, VBE, or SDVOBE as a sub-subcontractor or supplier.

When is the Schedule for Participation due to the awarding authority?

The prime contractor must submit the Schedule for Participation to the awarding authority within five business days after the opening of general bids.

What is the Letter of Intent (LOI)?

The Letter of Intent enumerates the scope(s) of work to be performed, the contract value, and other related information about the SDO-certified firm in question.

The Letter of Intent must be completed by any MBE, WBE, VBE, or SDVOBE listed on the Schedule for Participation. It is submitted by the MBE, WBE, VBE, or SDVOBE to the firm that is hiring it. The prime contractor must submit, to the Awarding Authority, the Letters of Intent for each MBE, WBE, VBE, or SDVOBE that will be used on the project.

When are the Letters of Intent due to the awarding authority?

The prime contractor must submit, to the awarding authority, all Letters of Intent within five business days of bid opening.

When are the subcontracts and purchase orders due to the awarding authority?

Within 30 calendar days of contract execution with the awarding authority, the contractor must submit, to the owner and/or OPM, the executed subcontract or purchase order for each MBE, WBE, VBE, and SDVOBE that was listed on the Schedule(s) for Participation. This includes any sub-subcontractor or supplier listed on any subcontractor's Schedule for Participation.

Can a contractor get credit for using other types of certified firms?

At this time, only MBEs, WBEs, VBEs, or SDVOBEs certified by the SDO can satisfy the respective diverse business goals on state-assisted building projects.

There is no credit for using other types of certified firms, including, but not limited to, a(n):

- Airport Concessions Disadvantaged Business Enterprise (ACDBE),
- Disability-owned Business Enterprise (DOBE),
- Disadvantaged Business Enterprise (DBE),
- Economically Disadvantaged Women-Owned Small Business (EDWOSB),
- Historically Underutilized Business Zone business (HUBZone),
- LGBT Business Enterprises (LGBTBE),
- Portuguese Business Enterprise (PBE),



- SBA 8(a)-certified firm,
- Service-Disabled Veteran-owned Small Business (SDVOSB)
- Small Business Enterprise (SBE),
- Small Business Purchasing Program-certified firm (SBPP),
- Small Disadvantaged Business (SDB),
- Woman-owned Small Business (WOSB),

Note: Many of these firms, such as SDVOSB and WOSB firms, may qualify for SDO certification. Nonetheless, in order for their participation to count towards business participation goals, such firms must apply to, and receive from, the SDO the applicable MBE, WBE, VBE, or SDVOBE certification.

What happens if the contractor doesn't meet the goals?

WBE, MBE, and VBE/SDVOBE goals are material terms of the contract. Awarding authorities must ensure compliance and, if necessary, enforce the terms of the contract. Awarding authorities are encouraged to work closely with counsel to review their options, which may include termination or contract-based penalties. The SDO can also be a resource to assist contractors with complying.

How do I report suspected fraud, waste, or abuse of this program?

If you believe that a certified firm does not meet SDO eligibility requirements, you may submit a complaint to the SDO via email at SDO-DL-Legal@Massmail.state.ma.us. The complaint should contain

- 1) your email address and phone number;
- 2) a short summary of how and why you believe a firm does not meet SDO eligibility requirements; and
- 3) any relevant supporting documentation.

If you believe that a SDO-certified firm has made fraudulent claims or statements to obtain a public contract, you may file a complaint with the [False Claims Division of the Massachusetts Attorney General's Office](#).

If you believe that you have been discriminated against on the basis of membership in a protected class, you may file a complaint with the [Massachusetts Commission Against Discrimination \(MCAD\)](#).