

CHAPTER 54
IOWA TARGETED SMALL BUSINESS PROCUREMENT PROGRAM

261—54.1(73) Purpose. The purpose of the Iowa targeted small business procurement program is to promote the growth, development and diversification of Iowa businesses owned by minorities and women by encouraging each state department and agency, community college, area education agency, or school district to include targeted small businesses (TSBs) as contractors, vendors and suppliers in their bid solicitations for the procurement of goods and services, including construction.

261—54.2(73) Definitions. As used in this chapter, unless the context otherwise requires:

“*Agency*” or “*department*” means the departments and independent agencies established in Iowa Code chapter 7E.

“*Certification*” means the process by which small businesses are identified as targeted small businesses by the department of inspections and appeals and determined eligible to participate in the targeted small business program.

“*Contract*” means any agreement or supplemental agreement between the state and its contractors, subcontractors, suppliers, vendors and professional service providers.

“*DIA*” means the department of inspections and appeals.

“*Education institution*” means a community college, area education agency, or a school district.

“*Goals*” means percentage or monetary goals set by a purchasing/contracting authority to encourage targeted small business participation.

“*Good faith effort*” includes, but is not limited to, efforts taken by a primary contractor to identify qualified TSBs for subcontract opportunities, notify qualified TSBs of potential subcontract opportunities, and assist TSBs in qualifying to bid as subcontractors.

“*IDED*” means the Iowa department of economic development.

“*IDOM*” means the Iowa department of management.

“*MBE*” means a minority business enterprise. An “*MBE*” is defined as one of the following:

1. A sole proprietorship in which the sole proprietor is a minority person who is in control of the day-to-day operations of the business and has the decision-making authority; or
2. A business corporation which is 51 percent or more owned by minorities and in which minorities with expertise and experience in the industry occupy the majority of management and board positions and control all day-to-day decisions concerning the corporation; or
3. A partnership which is 51 percent or more owned by minorities and in which minorities with expertise and experience in the industry occupy the majority of management and partnership positions and control all day-to-day decision-making authority concerning the partnership; or
4. Any other business or professional entity which is 51 percent or more owned and operated by minorities and in which minorities with expertise and experience in the industry occupy the majority of management of the day-to-day operation of the business and control all decision-making authority concerning the business or entity.

“*Minority*” means an individual who is Black, Hispanic, Asian or Pacific Islander, or American Indian or Alaskan native.

“*Primary contractor*” means the individual, firm, partnership or corporation, or the lawful agent of any individual, firm, partnership or corporation, or surety under a contract bond, constituting one of the principals to the contract and undertaking to perform the contract work specified. A “primary contractor” includes all heirs, executors, administrators, successors and assigns of any of the above.

“*Small business*” and “*targeted small business*” shall have the meanings as defined in Iowa Code section 15.102.

“*Subcontractor*” means an individual or business contracting to perform part or all of a primary contractor’s contract.

“*Uniform small business vendor application*” means the application (Form CPE-76740) developed by IDED which can be adopted by all agencies and departments of state government to identify

small businesses and targeted small businesses and contains information which can be used to determine certification as a targeted small business for participation in the Iowa targeted small business procurement program.

“WBE” means women business enterprise. A “WBE” is defined as one of the following:

1. A sole proprietorship in which the sole proprietor is a woman who is in control of the day-to-day operations of the business and has the decision-making authority; or
2. A business corporation which is 51 percent or more owned by women and in which women with expertise and experience in the industry occupy the majority of management and board positions and control all day-to-day decisions concerning the corporation; or
3. A partnership which is 51 percent or more owned by women and in which women with expertise and experience in the industry occupy the majority of management and partnership positions and control all day-to-day decisions concerning the partnership; or
4. Any other business or professional entity which is 51 percent or more owned and operated by women and in which women with expertise and experience occupy the majority of management decision making concerning the business or entity.

261—54.3(73) Preliminary procedures.

54.3(1) *Purchasing review.* Quarterly, each agency, department, community college and area education agency shall review their anticipated purchasing requirements. School districts shall review their anticipated purchasing requirements on an annual basis.

54.3(2) *Notice to IDED.*

a. State departments and agencies. The director of each department or agency shall notify the director of the IDED not later than August 15 of each fiscal year of their anticipated purchases outside of the department of general services and recommended TSB goals.

b. Community colleges and area education agencies (AEAs). Community colleges and AEAs shall, on a quarterly basis, review their anticipated purchasing requirements. Each community college president and AEA administrator shall notify the department of education by August 15 of each fiscal year of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the TSB procurement goal. The department of education shall forward the reports of the community colleges and AEAs to IDED no later than August 31.

c. School districts. School districts shall, on an annual basis, review their anticipated purchasing requirements. Each superintendent shall notify the department of education by August 15 of each fiscal year of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the TSB procurement goal. The department of education shall forward the reports of the school districts to the IDED no later than August 31.

54.3(3) *TSB goals.* The directors, community college presidents, school district superintendents and AEA administrators may divide larger, single project procurements into smaller contract award units to facilitate offers or bids from targeted small businesses. In designating TSB procurements, the directors, presidents, superintendents and administrators may vary the included procurements so that a variety of goods and services produced by different targeted small businesses may be identified each year.

54.3(4) *IDED and IDOM review.* The director of the IDED, or designee, in conjunction with the director of the IDOM, or designee, shall review the information submitted and may require necessary modifications from the agencies, departments, and education institutions to provide opportunities for TSBs.

54.3(5) *Procurement set-aside procedures.* Rescinded IAB 3/21/90, effective 4/25/90.

261—54.4(73) Identification of targeted small businesses. Before a small business can participate in the Iowa targeted small business procurement program, it must be certified as a targeted small business by the DIA. The DIA will review applications from targeted small businesses to determine

that they are eligible to participate in the program. Certification as a targeted small business by the DIA means that the business meets the minimum eligibility requirements; certification is not a representation that the business can perform targeted procurement.

261—54.5(73) IDED and IDOM administration.

54.5(1) Subcontracts. If a primary contractor will be subcontracting part or all of a contract, the primary contractor shall make a good faith effort to provide TSBs with opportunities to bid. The IDED or IDOM may review a primary contractor's good faith efforts and request modifications to planned efforts to ensure compliance with the purpose of the TSB program.

54.5(2) Good faith efforts. Departments, agencies and education institutions may require primary contractors to submit documentation of good faith efforts to provide TSBs with subcontract opportunities along with the bid bond, noncollusion affidavit and similar documents which are submitted separate from the actual bid. Departments, agencies and education institutions may determine that the primary contractor has failed to meet minimum bidding qualifications due to inadequate documentation of good faith efforts to provide TSB opportunities to bid and may decline to open the bid. In cases where the good faith efforts documentation is submitted as part of the bid documents and after review of the low bidder's good faith efforts, departments, agencies and education institutions may reject the bid as nonresponsive due to inadequate documentation of good faith efforts.

54.5(3) IDED and IDOM review. The IDED or IDOM may conduct a review of a department, agency or education institution where there is evidence of little or no progress toward reaching the TSB goal. The purpose of the review will be to identify the barriers encountered, evaluate the efforts taken to reach the goal, and provide needed assistance.

261—54.6(73) Certification. Transferred to 481—25.5(73), IAB 8/10/88.

261—54.7(73) Request for review of certification denial. Transferred to 481—25.6(73), IAB 8/10/88.

261—54.8(73) Certification review board. Transferred from 261—54.8(73) and rescinded, IAB 8/10/88, effective 7/22/88.

261—54.9(73) Decertification. Transferred to 481—25.7(73), IAB 8/10/88.

261—54.10(73) Notice of solicitation for bids.

54.10(1) Directory consulted. The director of each agency or department, the administrator of each area education agency, the president of each community college, and the superintendent of each school district releasing a solicitation for bids or request for proposal under the targeted small business procurement goal program shall consult a directory of certified targeted small businesses produced by the department of economic development that lists all certified targeted small businesses by category of goods or services provided prior to or upon release of the solicitation and shall send a copy of the request for proposal or solicitation to any appropriate targeted small business listed in the directory. The department of economic development may charge the department, agency, area education agency, community college, or school district, a reasonable fee to cover the cost of producing, distributing, and updating the directory.

54.10(2) Contents of solicitation or request for proposal. The notice to TSBs of the release of a request for proposal or solicitation for bid shall, at a minimum, include the:

- a. Description of the item to be bid;
- b. Date the bid is to be open and the closing date for submission; and
- c. Contact person in the soliciting agency, department, or education institution.

54.10(3) TSB directory. IDED compiles, and updates on a quarterly basis, a TSB directory. The TSB directory contains a listing of targeted small businesses that have been certified by DIA for participation in the TSB procurement program. The directory also includes a list of TSBs which have been decertified.

261—54.11(73) Negotiated price or bid contract. Rescinded IAB 3/21/90, effective 4/25/90.

261—54.12(73) Determination of ability to perform.

54.12(1) Ability evaluation. Prior to announcing the TSB award, the purchasing authority shall evaluate, in the same manner that other contractors and vendors are evaluated, whether the targeted small business scheduled to receive the award is able to perform the contract as a vendor or prime contractor. This determination shall include consideration of production and financial capacity and technical competence. In construction contracts, the prime contractor shall evaluate all subcontractors, including TSBs with whom the prime contractor has a contract.

54.12(2) Notice of inability to perform. If the purchasing authority determines that the targeted small business may be unable to perform, the director of IDED shall be notified.

54.12(3) IDED assistance. If, in the opinion of the purchasing authority, a TSB cannot perform, the purchasing authority shall immediately notify IDED. The IDED shall assist the targeted small business in attempting to remedy the causes of the inability to perform. In assisting the TSB, the IDED may use any management or financial assistance programs available through state or governmental agencies or private sources. Once IDED is notified of a TSB's inability to perform, IDED will respond to the purchasing authority within 14 days to indicate the planned course of action to assist the TSB. The IDED may contact a state agency, department, or education institution to verify that certified TSBs with whom they contract are performing under their contracts.

261—54.13(73) Other procurement procedures.

54.13(1) All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to procurement for targeted small businesses to the extent there is no conflict.

54.13(2) If the provisions of the "Iowa Targeted Small Business Procurement Act" or these implementing rules conflict with other laws or rules, then the provisions of the Act and these rules shall govern.

261—54.14(73) Reporting requirements.

54.14(1) Quarterly reports. The director of each agency or department shall submit to the IDED quarterly reports which shall be in the format and by the due date specified by the IDED. Each community college president and AEA administrator shall submit their quarterly reports to the department of education which shall forward the reports to IDED. The quarterly reports shall include as a minimum:

- a. The number of contracts awarded to TSBs under the TSB procurement program and the names of those contractors;
- b. A description of the general categories of contracts awarded to TSBs;
- c. The dollar value of contracts awarded to TSBs;
- d. The percentage of the dollar value of all contracts awarded to TSBs during this period compared to all contracts awarded for the period;
- e. Progress made toward attainment of their TSB goals; and
- f. In the end-of-year final report (4th quarter) an indication of whether the department or agency, community college, or AEA met its TSB goals. If the TSB goals were not met, the report shall indicate the reasons for not attaining the TSB goals including a description of any barriers encountered in meeting the TSB goals.

School districts shall submit to the department of education an annual report containing the information listed above, which shall be forwarded to IDED.

54.14(2) *Counting TSB participation toward meeting the TSB goal.* TSB participation shall be counted toward meeting the TSB goal as follows:

a. Once a firm is determined by the DIA to be a certified TSB, the total value of the contracts awarded to the TSB is counted toward the goal.

b. A department, agency, or education institution may count toward its goal only expenditures to TSBs that perform a commercially useful function in the work of a contract. A TSB is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a TSB is performing a commercially useful function, the department, agency, or education institution shall evaluate the amount of work subcontracted, normal industry practices, and other relevant factors.

c. Consistent with normal industry practices, a TSB may enter into subcontracts. If a TSB subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, a TSB shall be presumed not to be performing a commercially useful function. The TSB may present evidence to rebut this presumption to the department, agency, or education institution. The department's, agency's, or education institution's decision on the rebuttal of this presumption is subject to review by the IDDED.

d. A department, agency, or education institution may count toward its TSB goal expenditures for materials and supplies obtained from TSB suppliers and manufacturers, provided that the TSBs assume the actual and contractual responsibility for the provision of the materials and supplies.

e. A department, agency, or education institution may count its entire expenditure to a TSB manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).

f. A department, agency or education institution may count 100 percent of its expenditures to TSB suppliers or brokers that are not manufacturers, provided that the TSB supplier or broker performs a commercially useful function in the supply process.

261—54.15(73) Maintenance of records.

54.15(1) In order to monitor the progress of its targeted small business program each department, agency, or education institution shall develop a record-keeping system which will identify and assess TSB contract awards and the department's, agency's, or education institution's progress in achieving the TSB goal.

54.15(2) Specifically, a department, agency, or education institution shall maintain records showing:

a. Procedures which have been adopted to comply with the requirements of this rule.

b. Awards to TSB. These awards shall be measured against the department's, agency's, or education institution's goals.

54.15(3) Records shall be available upon the request of the IDDED, IDOM, or the state auditor.

These rules are intended to implement Iowa Code sections 73.15 to 73.21.

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