

§ 230.203

23 CFR Ch. I (4–1–03 Edition)

Federal-aid highway program as a minority business enterprise (MBE), women business enterprise (WBE), or disadvantaged business enterprise (DBE), all defined under 49 CFR part 23. This expanded definition is used only in this subpart as a simplified way of defining the firms eligible to benefit from this supportive services program.

(b) *Supportive Services* means those services and activities provided in connection with minority business enterprise programs which are designed to increase the total number of minority businesses active in the highway program and contribute to the growth and eventual self-sufficiency of individual minority businesses so that such businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts.

(c) *State highway agency* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* is considered equivalent to *State highway agency* if the context so implies.

§ 230.203 Policy.

Based on the provisions of Pub. L. 97–424, dated January 6, 1983, it is the policy of the Federal Highway Administration (FHWA) to promote increased participation of minority business enterprises in Federal-aid highway contracts in part through the development and implementation of cost effective supportive services programs through the State highway agencies.

§ 230.204 Implementation of supportive services.

(a) Subject to the availability of funds under 23 U.S.C. 140(c), the State highway agency shall establish procedures to develop, conduct, and administer minority business enterprise training and assistance programs specifically for the benefit of women and minority businesses. Supportive services funds allocated to the States shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section. Individual States are encouraged to be actively

involved in the provision of supportive services. Such involvement can take the form of staff, funding, and/or direct assistance to augment the supportive services efforts financed by Federal-aid funds.

(b) State highway agencies shall give preference to the following types of services:

(1) Services relating to identification, prequalification, and certification assistance, with emphasis on increasing the total number of legitimate minority business enterprises participating in the Federal-aid highway program;

(2) Services in connection with estimating, bidding, and technical assistance designed to develop and improve the capabilities of minority businesses and assist them in achieving proficiency in the technical skills involved in highway construction;

(3) Services designed to develop and improve the immediate and long-term business management, recordkeeping, and financial accounting capabilities;

(4) Services to assist minority business enterprises to become eligible for and to obtain bonding and financial assistance;

(5) Services relating to verification procedures to ensure that only *bona fide* minority business enterprises are certified as eligible for participation in the Federal-aid highway program;

(6) Follow-up services to ascertain the outcome of training and assistance being provided; and

(7) Other services which contribute to long-term development, increased opportunities, and eventual self-sufficiency of minority business enterprises.

(c) A detailed work statement of the supportive services which the State highway agency considers to meet the guidance under this regulation and a program plan for meeting the requirements of paragraph (b) of this section and accomplishing other objectives shall be submitted to the FHWA for approval.

(d) State highway agencies which desire to provide or obtain services other than those listed in paragraph (b) of this section shall submit their proposals to the FHWA for approval.

(e) When the State highway agency provides supportive services by contract, formal advertising is not required by FHWA; however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with majority and minority contractors, contractors' associations, minority groups, and other persons or organizations whose cooperation and assistance will increase the opportunities for minority business enterprises to compete for and perform contracts and subcontracts.

(f) In the selection of contractors to perform supportive services, State highway agencies shall make conscientious efforts to search out, and utilize the services of qualified minority or women organizations, or minority or women enterprises.

(g) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the total number of minority firms participating in the Federal-aid highway program and to contribute to the growth and eventual self-sufficiency of minority firms;

(2) A statement that supportive services shall be provided only to those minority business enterprises determined to be eligible for participation in the Federal-aid highway program in accordance with 49 CFR part 23 and have a work specialty related to the highway construction industry;

(3) A clear and complete statement of the services to be provided under the contract, such as technical assistance, managerial assistance, counseling, certification assistance, and follow-up procedures as set forth in § 230.204(b) of this part;

(4) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in Form FHWA-1273, Required Contract Provisions,

Federal-Aid Construction Contracts,¹ and a statement of nondiscrimination in employment because of race, color, religion, sex, or national origin;

(5) The establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(6) Monthly or quarterly reports to the State highway agency containing sufficient data and narrative content to enable evaluation of both progress and problems;

(7) The basis of payment;

(8) An estimated schedule for expenditures;

(9) The right of access to records and the right to audit shall be granted to authorize State highway agency and FHWA officials;

(10) Noncollusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract; and

(12) A termination clause.

(h) The State highway agency is to furnish copies of the reports received under paragraph(g)(6) of this section to the FHWA division office.

[50 FR 51243, Dec. 16, 1985, as amended at 52 FR 36922, Oct. 2, 1987]

§ 230.205 Supportive services funds obligation.

Supportive services funds shall be obligated in accordance with the procedures set forth in § 230.117(b) of this part. The point of obligation is defined as that time when the FHWA has approved a detailed work statement for the supportive services.

§ 230.206 Monitoring supportive services.

Supportive services programs shall be continually monitored and evaluated by the State highway agency so that needed improvements can be identified and instituted. This requires the documentation of valid effectiveness

¹Form FHWA-1273 is available for inspection and copying at the locations given in 49 CFR part 7, appendix D, under Document Inspection Facilities, and at all State highway agencies.