

**RULES, REGULATIONS, PROCEDURES AND CRITERIA GOVERNING
CERTIFICATION AND DECERTIFICATION OF MBE ENTERPRISES**

BY THE

STATE OF RHODE ISLAND

As Amended August 2016

**Rhode Island Department of Administration
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The following amended Rules, Regulations, Procedures and Criteria Governing Certification and Decertification of MBE Enterprises by the State of Rhode Island were adopted by me, as Director of the State of Rhode Island Department of Administration, on the 18th day of August 2016.



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1.00 PURPOSE AND AUTHORITY

Pursuant to Rhode Island General Law 37-14.1-7 which relates to Minority Business Enterprise and 42-35-1 relating to the Administrative Procedures Act, the Rhode Island Department of Administration has developed Rules and Regulations governing the certification and decertification of small businesses that are owned and controlled by minorities, woman or disadvantaged individuals to participate in state and federal programs administered by the State of Rhode Island. To qualify as a Minority Business Enterprise (MBE), a firm must meet eligibility standards established in Sections 3.00 through 3.05 of these “Rules, Regulations, Procedures and Criteria Governing the Certification and Decertification of MBE Enterprises”.

2.00 DEFINITIONS

- A. An Annual Update is the information required from a certified firm prior to its anniversary date. Materials to be furnished may include, but not necessarily be limited to, most recently filed personal and business tax returns, year-end financials, personal financial statement(s) of all owners, and a no change affidavit.
- B. Applicant is any business that applies to D.O.A. for certification, decertification, reconsideration or appeal.
- C. Architect-Engineer means:
 - 1. Professional services of an architectural or engineering nature, as defined by Rhode Island State Law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services.
 - 2. Other professional services associated with research, planning, development, design, construction, alteration, or repair of real property that the contracting officer determines are of an architectural or engineering nature. (49 CFR)
- D. Awarding Authority means any agency or department of the federal government, the State of Rhode Island or their political subdivisions that awards contracts using public funds.
- E. Caseworker and/or Representative of D.O.A. means a D.O.A. staff member, or its designee assigned to review applications.
- F. Certification means that a company has met the burden of demonstrating by the preponderance of evidence, that it meets the requirements of these regulations and federal regulations concerning group membership, individual disadvantage, business size, ownership and control.

- G. Certification Period is the length of time a firm may be certified prior to having to undergoing another full review of its eligibility and qualifications for certification.
- H. Certification Review Committee (also referred to as the C.R.C.) shall function as an appellant body. Firms that are denied certification as an MBE, WBE, or DBE may request a hearing before the C.R.C. in order to appeal said decision. The C.R.C. consists of five (5) members appointed by the Director of the Department of Administration. The Director of the Department of Administration will appoint the chairperson of this committee. The five (5) members will consist of one (1) individual from the Rhode Island Department of Transportation and four (4) individuals from the public or private sector. At least four members will represent the minority groups as defined under RIGL 37-14.1. Each member, including the chairperson, will serve at the pleasure of the Director of the Department of Administration and their term will be perpetual or until a replacement is appointed. No person involved in the original determination shall serve as a member of the CRC during an appeal.
- I. Certified means an applicant firm which has been reviewed by D.O.A. and found to have met the certification requirements provided in these regulations.
- J. Construction means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. (49 CFR)
- K. Days refers to business days not calendar days.
- L. D.O.A. is the Rhode Island Department of Administration.
- M. Hearings are formal meetings held at the request of the applicant and conducted pursuant to the Administrative Procedures Act. Hearings are conducted by the C.R.C. and relate to the denial determination of an applicant or decertification of a certified firm.
- N. Manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the recipient or contractor. (49 CFR & 13 CFR)
- O. Minority (MBE) Business Enterprises are small business enterprises whose owners are rebuttably presumed to be socially and economically disadvantaged individuals, who are citizens of the United States or legal permanent residents, and who are members of a definable minority group that own and control the business.
- P. Ongoing concern is a business whose activity is consistent and perpetual and whose business hours are regular.

- Q. Other Minority Business Enterprises are socially and economically disadvantaged firms which are owned and controlled by individuals who are citizens of the United States, or legal permanent residents whose social disadvantage must stem from an individual's color, national origin; gender, physical handicap; long term residence in an environment isolated from the mainstream of American society; or other similar cause beyond the control of the individual, and whose economic disadvantaged must stem from an inability to compete in the free enterprise system due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and/or competitive market area who are not socially disadvantaged., (13 CFR Chapter 124.103...109)
- R. Regular Dealer/Supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products needs not keep such products in stock, if it owns or operates distribution equipment. (49 CFR & 13 CFR)
- S. Regulations refer to all of the provisions contained in this document or regulations established by other awarding or certifying federal authorities, including, but not necessarily limited to, 49 CFR and 13 CFR.
- T. Rhode Island Bridge Fund Minority Business Enterprise (RIBFMBE) – In accordance with RIGL 42-13.1-17, the Rhode Island Bridge Replacement, Reconstruction and Maintenance Fund Act of 2016 (RIBF Act), as enacted in Public Law 2016, Ch. 3 (H7409 Substitute A, as amended), provides: *“Equality of opportunity. – No bid under this chapter shall be deemed complete nor awarded if the bid fails to include a specific written plan for the bidder to be in conformity with § 37-14.1-6, ensuring that minority business enterprises reach a minimum of ten percent (10%) of the dollar value of the bid. Pursuant to § 37-14.1-3, for the purposes of chapter 13.1 of title 42, women shall be included in the definition of “minority business enterprise”. The aforementioned written plan should be submitted on forms created and distributed by the director of administration.”* Firms certified as either an MBE, WBE, or DBE by the Department of Administration, Office of Diversity Equity and Opportunity (ODEO), MBE Compliance Office (MBECO) shall administratively be granted automatic certification as a RIBFMBE for those projects covered under the RIBF Act. For the purpose of RIBFMBE certification only, MBE/WBE certification criteria shall be consistent with DBE certification criteria governed by 49 CFR 26.
- U. Service – a contract or firm whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. (49 CFR)

- V. Site Visit is a visit by a D.O.A. staff member, or its designee to an applicant’s business facility or job location.

3.00 CERTIFICATION CRITERIA

D.O.A. will certify or recertify only those firms which meet all of the requirements as outlined below:

- A. Be a small business concern as defined pursuant to Section 3 of the Federal Small Business Act (15 U.S.C. Chapter 632 and Chapter 637) and implementing regulations (13 CFR), and fulfill one of the definitions as defined in Section 2.00 (O) or Section 2.00 (Q) of these regulations.
- B. Owner(s) must be a member of a definable minority group, woman, and/or an individual(s) found to be both socially and economically (49 CFR 26) disadvantaged.
- C. Minority, Disadvantaged or Women partners/shareholders must own at least 51 percent of the business.
- D. Minority, Disadvantaged or Women owners must possess control of the business and the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on management, policy and operations.
- E. Minority, Disadvantaged, or Women owners must be substantial investors in the business.
- F. The business must be an ongoing concern.
- G. The business must be in operation a minimum of six (6) months prior to applying for certification.
- H. Existing businesses whose ownership and control has been transferred to minorities or women must be in the control of the minorities/women a minimum of six (6) months prior to applying for certification.

3.01 MEMBERSHIP REQUIREMENT

A member of a definable minority group means a person who is a citizen or lawful permanent resident of the United States and who is:

<u>Category</u>	<u>Definitions</u>
Black	All persons having origins in any of the Black racial groups of Africa.

Hispanic	All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
American Indian/Alaskan Native	All persons having origins in any of the original peoples of North America.
Asian American	All persons having origins in any of the original peoples of the Far East, Southeast, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.
Portuguese	All persons of Portuguese, Brazilian or other Portuguese culture or origin regardless of race.
Women	Any female qualifies as a class of minority.
Disadvantaged	Members of other groups or other individuals, found to be economically and socially disadvantaged by the small Business Administration under Section 8 (a) of the Small business Act, as amended (15 U.S.C. Chapter 637 (a)).

3.02 OWNERSHIP REQUIREMENTS

An applicant must satisfy either of A, B or C, as well as D, E, and F below in order to be considered 51 percent owned by members of a definable minority group:

- A. In a corporate form of organization, the Minority, Disadvantaged or Women shareholders of the corporation must own at least 51 percent of each and every class of stock, including 51 percent of all voting stock in the corporation; or
- B. In a partnership form of organization, the Minority, Disadvantaged or Women partners must own at least 51 percent of the partnership; or
- C. In any other form of organization, the Minority, Disadvantaged, or Women owners must own at least 51 percent of the business interest of the organization including but not limited to 51 percent of the ownership of assets, dividends, and intangible assets such as copyrights and patents; and
- D. The Minority, Disadvantaged or Women owners must demonstrate that they are entitled to receive profits from the business firm and that they are entitled to share in any other benefit which accrues to all owners of the business firm; and

- E. The Minority, Disadvantaged or Women owners must substantially share in all the risks assumed by the business firm, and
- F. The business firm cannot at any time enter into any agreement, option, scheme, or create any rights of conversion, which if exercised, would result in less than 51 percent minority, disadvantaged or women ownership of the business firm.

3.03 CONTROL REQUIREMENTS

To prove that the minority, disadvantaged or women owners possess control over the business, an applicant must satisfy all the requirements of Sections A, B, and C below:

- A. The Minority, Disadvantaged or Women owners must demonstrate that they have control over:
 - 1. The day-to-day management of the business, and
 - 2. The policy-making mechanism of the business.

The ownership and control by the Minority, Disadvantaged or Women owners must be real, substantial, and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership document.

The Minority, Disadvantaged or Women owners must establish their control by providing substantial evidence that they possess the power to direct or cause the direction of the management of the firm and to make day-to-day as well as major decisions on matters of management, policy, and operations by establishing the following:

- a. Have the power to direct or cause the directions of the purchase of goods, equipment, business inventory and services needed in the day-to-day operation of the business.
- b. Have the authority to hire and fire employees, including those to whom management authority is delegated.
- c. Be an authorized signature on all corporate accounts-checking, savings, and other financial accounts.
- d. Have a thorough knowledge of the financial structure of the business and authority to determine all financial affairs.
- e. Have the capability, knowledge and experience required to make decisions regarding the particular type of work engaged in by the

MBE.

- f. Have displayed independence and initiative in seeking and negotiating contracts, accepting and rejecting bids and in conducting all major aspects of the business.
- B. Any of the following conditions creates an irrefutable presumption that the owners do not have control of the business that is applying for certification.
1. If the Minority, Disadvantaged or Women owners are current employees of a non-minority business corporation, or individual, or partnership which has a significant ownership interest in the business firm applying for certification.
 2. If the directors and/or management of the applicant firm is substantially the same as the affiliated non-minority firm.
 3. If the applicant is a wholly-owned subsidiary of a non-minority firm.
 4. If the applicant has an extremely dependent relationship on a non-minority firm or individual.
- C. Any agreement, option, right of conversion, scheme or other restraint, which, if exercised, would result in less than dominant control by the minority owners is prohibited.

3.04 SUBSTANTIAL INVESTMENT IN BUSINESS REQUIREMENT

The Minority, Disadvantaged or Women owners must demonstrate that they have substantial personal investment in the Business. Proof of such substantial investment must be established by producing evidence of the following:

1. A substantial amount of money invested in the business, or
2. Investment in the form of capital, equipment, contribution of property, space, patents and copyrights.

Contributions of personal or professional services alone will not be considered substantial investment” for the purpose of this section. However, a contribution of such services will receive consideration when given in conjunction with other tangible forms of investment.

There will be an irrefutable presumption that the Minority, Disadvantaged or Women owners have not made a substantial investment in the business if a significant portion of the applicant’s equity is financed by a loan or gift from a non-minority corporation, partnership or individual that has a significant interest in the applicant.

3.05 CONTINUING OPERATIONAL REQUIREMENT

The applicant must be an ongoing business concern; it must demonstrate to the satisfaction of the Department of Administration that it was not established solely for the purpose of competing for MBE programs.

4.00 APPLICATIONS

Applicants must complete the application supplied by the Rhode Island Department of Administration, supply all the information requested therein, agree to supply any additional information requested by D.O.A. and agree to be bound by all the provisions and regulations governing the certification and recertification process as detailed by these regulations.

5.00 INTAKE AND EVALUATION PROCEDURES

- A. The caseworker and/or representative of D.O.A. will review each application to determine if the applicant has submitted a complete application.
- B. If the applicant has failed to submit all requested information, the applicant will be notified via mail or by email at the address furnished by the applicant by the caseworker and/or representative of D.O.A. detailing what required information is missing from their application.
- C. Any application for which all requested information is not received within a 30 calendar day period from the date of the notification will either be withdrawn and the applicant cannot reapply earlier than 60 days from the expiration of the 30 day period, or the application may be denied.
- D. The caseworker and/or representative of D.O.A. will evaluate the completed application and may conduct a site visit and complete a site visit report if it felt that further investigation of the applicant firm is warranted to determine whether the applicant meets the requirements for certification as an MBE. This evaluation will be completed within a reasonable time after receipt of the completed application, which shall not exceed ninety (90) days. (Note: While the office is awaiting additional information from the applicant, the ninety (90) day period for processing an application is suspended until all additional information requested from the applicant has been received.)
- E. D.O.A. may, in its discretion, grant or request an interview with the applicant firm, if it feels an interview is essential to complete the application review process.
- F. After review and verification of each application a case evaluation and/or site-visit report will form the basis of the report prepared by the caseworker and/or

representative of D.O.A. to the Assistant Administrator – MBE within the Office of Diversity, Equity and Opportunity (ODEO).

- G. No requests for withdrawal of an application will be considered once the report has been prepared by the caseworker and/or representative of D.O.A. for the Assistant Administrator – MBE.

- H. The Assistant Administrator – MBE and the Associate Director of the Office of Diversity, Equity and Opportunity will meet to review the application and reports of the caseworker and/or representative of D.O.A. to determine the certification of the applicant. If the Assistant Administrator – MBE and the Associate Director of the Office of Diversity, Equity and Opportunity, jointly, determine that an applicant meets the criteria for certification as an MBE pursuant to these regulations, D.O.A. shall certify the applicant. If the Assistant Administrator – MBE and the Associate Director of the Office of Diversity, Equity and Opportunity, jointly, determine that an applicant firm does not meet the criteria for certification as an MBE pursuant to these regulations, D.O.A. shall notify the applicant firm by certified mail of the denial determination and the basis for these findings including a reference to the specific sections of these rules that the applicant has failed to comply with. The applicant will also be notified that the applicant may request an appeal hearing before the Certification Review Committee. In the event that the Assistant Administrator – MBE and the Associate Director of the Office of Diversity, Equity and Opportunity are not unanimous in their certification determination decision, the applicant will automatically be scheduled for a hearing before the C.R.C for final adjudication.
 - 1. Applicant firm seeking an appeal hearing before the C.R.C. must notify D.O.A. in writing by certified mail of its intention to appeal within ten (10) days of the receipt of the denial determination.

- I. C.R.C. will meet to determine the appeal of the applicant at the hearing based on its review of application, the report of the caseworker and/or representative of D.O.A. and any evidence which may be presented by the applicant at the hearing. Appeal hearings before the C.R.C. shall be conducted pursuant to R.I.G.L. Chapter 37-14.1 et seq. The applicant firm will be provided with a Notice of Appeal Hearing before the C.R.C. which shall include (1) a statement of the time, place, and nature of the hearing and (2) a statement that the applicant shall be afforded a full opportunity to present evidence in support of its appeal.
 - 1. It is critical and extremely important that the applicant firm clearly understand that the report of the caseworker and/or representative of D.O.A. is based solely on the information and documentation submitted by the applicant concern covering the period between initial submission of the certification package and the final determination of the Assistant Administrator – MBE and the Associate Director of the Office of Diversity, Equity and Opportunity. It is only proper and procedurally

correct that a determination by the C.R.C. regarding the appeal be made on the same information and documentation.

- J. After CRC has conducted its hearing it shall notify the applicant by certified mail, in writing of its decision, which shall include findings of fact and conclusions of law.
- K. The decision of the CRC is administratively final.
- L. If certification is denied applicant may reapply no earlier than one year after the date of the decision of the D.O.A.

6.00 APPEAL HEARING PROCEDURES

The Certification Review Committee will hold hearings for those applicants seeking an appeal of a denial determination.

A. Open Hearings:

The hearings will be open to the public and the applicant shall appear and may bring a representative and witnesses. The Chairperson of the CRC or its designee may, in the interest of an orderly meeting, have the discretion to limit testimony of witnesses and the evidence presented to that which is relevant to the applicant's proper proof of its compliance with these rules concerning certification.

B. Conduct at the Hearing:

The applicant and all parties present at the hearing shall conduct themselves in a manner consistent with the standards of judicial decorum accepted by the courts of Rhode Island. The chairperson of the CRC or its designee will have the authority to take any action necessary to enforce these standards during the course of the hearing.

C. Stipulations:

Both CRC and the applicant may enter written stipulations if they are signed by the parties sought to be bound thereby and if the opposing side does not disagree or object. If the opposing side disagrees or objects, the Chairperson will rule on the propriety of admitting or rejecting the stipulation.

Oral stipulation may be made on the record, at the discretion of the Chairperson, during the course of the hearing.

D. Evidence:

1. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this state shall be followed; but, when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be submitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted on the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.
2. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request parties shall be given an opportunity to compare the copy with the original;
3. A party may conduct cross examinations required for full and true disclosure of the facts.

E. Administrative Notice:

Notice may be taken of judicially cognitive facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge; but parties shall be notified before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memorandum or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

F. The Hearing Record

The Chairperson shall direct that a recording be made by electronic recording equipment of each proceeding. At the request of an applicant, the Chairperson shall allow a stenographer to record the proceedings, provided, however, that copies of the hearing transcript must be provided to the Certification Review Committee (C.R.C.) and the MBE Compliance Office within 30 days of the conclusion of the hearing.

7.00 DECERTIFICATION

D.O.A. may, at any time after it has certified an MBE withdraw certification if the status of that firm's ownership, control, or management make such action necessary, or if it fails to maintain its status as an ongoing business, or it has violated the guidelines of an

10.00 ANNUAL UPDATE

The Rhode Island Department of Administration requires that all certified firms update their business information on an annual basis. Failure to furnish requested information may result in loss of certification, after being provided with the opportunity to be heard by the MBE Compliance Office.

D.O.A. shall issue a Notice Of Pending Expiration of Certification to each MBE or WBE approximately sixty (60) days before the expiration of the certification period—however, failure of D.O.A. to issue the notice or failure of the certified MBE or WBE to receive the notice shall not extend the existing certification period nor relieve the MBE or WBE of the obligation to submit a timely application for recertification in accordance with this section.

The application for Renewal of Certification shall be submitted to D.O.A. not less than thirty (30) days before the date of expiration of the existing certification.

Applications for recertification shall meet all of the requirements for application for certification set forth in Section 3.00 through 4.00 with all information, and documents, updated to the date of the application for renewal.

Failure of a certified firm to recertify in a timely manner will result in this firm not being recertified by D.O.A. A firm that fails to provide all information required for recertification must submit a new certification application, with all accompanying documents and this application will be processed as prescribed in Section 5.00 of these regulations.

11.00 MISCELLANEOUS

Effect of Prior MBE Certification by Another State or Federal Agency

Prior MBE certification of the applicant by another state or federal agency or a UCP shall be considered by the D.O.A., but in no case shall this prior certification be considered conclusive proof that the applicant is eligible for certification.

12.00 JUDICIAL REVIEW

An applicant may seek judicial review of any final administrative decision of the D.O.A. and/or the C.R.C. in accordance with R.I.G.L. Chapter 42-35.

13.00 SEVERABILITY

The provisions of this document are severable, and if any of the provisions shall be held to be unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

14.00 GUIDELINES

This certifying authority is not limited to basing certification or decertification solely on the criteria outlined in these rules and regulations but may consider regulations established by other awarding and/or certifying authorities, including, but not necessarily limited to, 49 CFR Part 23, 49 CFR Part 26, 13 CFR Part 121 and 13 CFR Part 124.

15.00 EFFECTIVE DATE

These rules and regulations shall take effect twenty (20) days after filing.