

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

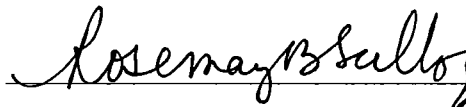
BY THE

STATE OF RHODE ISLAND

As Amended December 2010

**Minority Business Enterprise Compliance Office
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 3rd day of December 2010.

A handwritten signature in cursive script, reading "Rosemary Booth Gallogly", written over a horizontal line.

Rosemary Booth Gallogly, Director
State of Rhode Island
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1.0 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 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".

2.0 DEFINITIONS

- A. An Annual Update is the information required from a certified firm prior to its anniversary date. Materials to be furnished include at minimum 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.) is responsible for the certification, recertification and/or decertification of MBE applicant firms and/or other firms certified under a Unified Certification Program (UCP) as authorized by the US Department of Transportation or as an 8(a) firm certified by the US Small Business Administration. 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.
- I. Certified means an applicant firm which has been reviewed by C.R.C. 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, or C.R.C. and conducted pursuant to the Administrative Procedures Act. Hearings are conducted by the C.R.C. and relate to the certification, recertification, or decertification of an applicant or 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. 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)
- U. 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 disadvantaged. (13 CFR Chapter 124.103-106).
- 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 Certification Review Committee 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 Certification Review Committee (also referred to as the C.R.C.).
- 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 Certification Review Committee.
- H. C.R.C. 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 C.R.C. determines that an applicant meets the criteria for certification as an MBE pursuant to these regulations, it shall certify the applicant. If C.R.C. determines that an applicant firm may not meet the criteria for certification as an MBE pursuant to these regulations, C.R.C. shall instruct the caseworker and/or representative(s) of D.O.A. to notify the applicant firm by certified mail of its findings and the basis for these for their findings. The application will also be provided with a Notice of Hearing before the C.R.C. which shall include: (1) a Statement of the time, place, and nature of the hearings; (2) a statement that the hearing is to be conducted pursuant to R.I.G.L. Chapter 37-14.1 – 1 et seq; (3) a reference to the specific sections of these rules that the applicant has failed to

comply with; and (4) a statement that the applicant shall be afforded a full opportunity to present evidence in support of its application.

1. Applicant firm must notify the C.R.C. in writing by certified mail of its intention to attend the hearing within ten (10) days of the receipt of notice of hearing. Failure to respond to the notice of hearing within the ten (10) days of the receipt of notice will result in the application being denied.
- I. C.R.C. will meet to determine the certification or denial of certification 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.
 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 presentation of its report to the committee. It is only proper and procedurally correct that a determination 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 C.R.C.

6.00 HEARING PROCEDURES

The Certification Review Committee may elect to hold hearings whenever, it is deemed necessary.

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 HEARINGS

In addition to the General Hearing procedures outlined in these regulations, the following rules shall apply to hearings. C.R.C. shall:

- A. Inform the Certified Enterprise or applicant firm that C.R.C. considers a hearing to be necessary.
- B. Inform the Certified Enterprise or applicant firm of the date, time and place of the hearing.
- C. Inform the Certified Enterprise or applicant firm that failure to appear will result in default and automatic removal of its certification.
- D. Conduct the hearings in accordance with the Hearing procedures established by these regulations.
- E. Render a decision, give the MBE notice of that decision, and if decertified or denied certification advise it of its options.
- F. Inform all awarding authorities (if the MBE is decertified) of the decertification and that the firm is no longer eligible for future contract awards as a certified firm.

8.00 DECERTIFICATION

C.R.C. 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 awarding authority or no longer qualifies as a small business concern. A firm may be decertified by the Certification Review Committee after being provided with an opportunity to be heard by the MBE Compliance Office.

9.00 GROUNDS FOR COMPLAINT

Any person, including a D.O.A. staff member or a representative of an awarding authority, can, in writing, make a complaint to D.O.A. against any MBE if that person believes that the MBE is abusing its certified status or failing to conduct itself as a bona fide MBE. D.O.A. reserves the right to investigate any and all complaints, and will report its findings to the C.R.C.

If, after its investigation, C.R.C. finds that an MBE

- A. submitted inaccurate or false information to D.O.A. during the certification or recertification process; or
- B. has violated the guidelines of an awarding authority; or
- C. has changed its ownership, control, or management without notifying D.O.A. within thirty (30) days of such change; or
- D. has failed to conduct itself as a bona fide MBE or to maintain its status as an ongoing concern, it may seek an informal resolution to the problem, hold a hearing, or immediately decertify the MBE.

10.00 INFORMAL RESOLUTION

If C.R.C. chooses to seek an informal resolution to the problem, it will:

- A. advise the enterprise of the allegations made against it, and
- B. inform the enterprise of the findings of the representative who investigated its case, and
- C. request that the MBE/WBE take voluntary action to correct the problem within thirty (30) days of notification.

When C.R.C. in its judgement concludes that a MBE has failed to take corrective action within thirty (30) days of notification, it will recommend either that a decertification hearing be held, or that the firm be immediately decertified.

11.00 ANNUAL UPDATE

The Rhode Island Department of Administration and the Certification Review Committee (C.R.C.) require 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 C.R.C. 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.

12.00 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 Committee, but in no case shall this prior certification be considered conclusive proof that the applicant is eligible for certification.

13.00 JUDICIAL REVIEW

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

14.00 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.

15.00 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.

16.00 EFFECTIVE DATE

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