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RULES AND REGULATIONS PERTAINING TO

Chapter J. Disability Business Enterprises

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COMPILER'S NOTES:

Link to an endnote are ^{red super script} and web link are [blue](#) as below, move ⌨ to colored text and click to open. All forms references are available on line at www.disabilities.ri.gov

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I. STATUTORY AUTHORITY

RI GL 37-2.2 Disability Business Enterprises ¹

II. DEFINITIONS

A. “The Commission” shall mean the [Governor’s Commission on Disabilities](#) ².

B. The terms “A physical or mental impairment”; “Persons with disabilities” or “person with a disability”; and “Small disadvantaged disability businesses owned and controlled by persons with disabilities”; are defined in RI GL 37-2.2-2 and “disadvantaged [disability] businesses” as used in the context of RI GL 37-2.2-1”.

C. The terms: “Construction”; “Contract”; “Contractor”; “Governmental entity”; “Procurement”; “Public agency”; “State agency”; “The State”, and as used in the context of “Procurement”, the term “services” are defined in RIGL 37-2-7 ³.

III. PURPOSE ⁴

The purpose of this regulation is to implement RIGL 37-2.2 and carry out the state’s policy ⁵ of supporting the fullest possible participation of small disadvantaged businesses owned and controlled by persons with disabilities in state funded and state directed public construction and projects and in state purchases of goods and services. This includes assisting disadvantaged disability businesses throughout the life of contracts in which they participate.

IV. CERTIFICATION OF DISADVANTAGED BUSINESS ENTERPRISES ⁶

A. A disadvantaged disability business shall apply to the Disability Business Enterprise Committee for certification as a “disadvantaged disability business” by:

1. Completing an on-line Rhode Island Vendor Information Program vendor registration process, including the selection of commodity codes indicating the products and services offered for sale to the State, and
2. Submitting RI GCD Form J. “Disability Business Enterprise Application for Certification”.

B. The Disability Business Enterprise Committee shall be entitled to request such additional documentation, as it deems necessary to adequately evaluate the application, and where

appropriate, meet with the applicant to informally review the application, prior to issuing or rejecting its application for certification.

C. The Disability Business Enterprise Committee shall, by majority vote of those members present and voting, certify or deny certification of each applicant at a scheduled meeting of the committee. The applicant shall be notified that the committee will be considering the application, at least 6 business days in advance of the meeting.

D. Applicants shall receive written notification of the actions of the Disability Business Enterprise Committee concerning their application, within 6 business days of that action. The appeal procedures will be attached to the written notification of denial of certification.

V. ANNUAL RECERTIFICATION

A. A disadvantaged disability business or shall annually apply for recertification, on the first day of December following the anniversary of the initial awarding of certification to the Disability Business Enterprise Committee as a “disadvantaged disability business” by:

1. Completing or updating on on-line Rhode Island Vendor Information Program vendor registration process, including the selection of commodity codes indicating the products and services offered for sale to the State, and

2. Submitting RI GCD Form J “Disability Business Enterprise Application for Certification” and only supporting documentation that indicates changes since the last submission.

B. The Disability Business Enterprise Committee shall be entitled to request such additional documentation, as it deems necessary to adequately evaluate the application, and where appropriate, meet with the applicant to informally review the application, prior to issuing or rejecting its application for recertification.

C. The Disability Business Enterprise Committee shall, by majority vote of those members present and voting, certify or reject recertification of each applicant at a scheduled meeting of the committee. The applicant shall be notified that the committee will be considering the application, at least 6 business days in advance of the meeting.

D. Applicants shall receive written notification of the actions of the Disability Business Enterprise Committee concerning their application, within 6 business days of that action. The appeal procedures will be attached to the written notification of rejection of certification.

VI. REVOCATION OF CERTIFICATION

A. Grounds for revocation of DBE certification may include but are not limited to:

1. Failure to comply with disability business enterprise or purchasing statutes and/or regulations;

2. Suspension or debarment by the State or Federal Government;

3. Falsification of information on the application; and

4. Failure to comply with federal and/or State wage requirements.

B. The Disability Business Enterprise Committee shall, by majority vote of those members present and voting, revoke certification of a “disadvantaged disability business” at a scheduled meeting of the committee. The “disadvantaged disability business” shall be notified that the committee will be considering the application, at least 6 business days in advance of the meeting.

C. The “disadvantaged disability business” shall receive written notification of the actions of the Disability Business Enterprise Committee concerning their certification, within 6 business days of that action. The appeal procedures will be attached to the written notification of revocation of certification.

VII. PROCEDURE FOR APPEALING REJECTION OF CERTIFICATION / RECERTIFICATION OR REVOCATION OF CERTIFICATION

A. In the event an applicant is not certified, recertified, or if certification is revoked, the applicant shall have the right to appeal said decision. The applicant shall submit, in writing, a request for a hearing within 20 business days of the receipt of the Disability Business Enterprise Committee's denial of certification to the Commission.

B. The Commission's Executive Committee shall conduct the appeal hearing in accordance with the Administrative Appeals Act, RI GL § 42-35.

VIII. POLICY AND APPLICATION ⁷

A. It is the policy of the State of Rhode Island that small disadvantaged disability businesses shall have the maximum opportunity to participate in the performance of procurements and projects to any and all state purchasing, including, but not limited to, the procurement of goods and services, construction projects, or contracts funded in whole or in part by state funds, or funds which, in accordance with a federal grant or otherwise, the state expends or administers or in which the state is a signatory to the construction contract.

B. The Disability Business Enterprise Committee will advise the director of administration on the establishment of rules and regulation formulas for awarding contracts to small disadvantaged businesses owned and controlled by persons with disabilities in the procurement of goods, services, construction projects, or contracts funded in whole or in part by state funds, in accordance with section 37-2-9(b)(14) on or before January 1, 2013.

IX. PROCUREMENT

A. The Commission's Disability Business Enterprise Committee shall prepare and submit a list of the certified small disadvantaged disability businesses and the products and services provided by them to the chief purchasing officer at least once a year. The chief purchasing officer shall utilize that procurement list in the program which involves small disadvantaged businesses as contractors established by subsection 37-2-9(b)(14).

1. The list of products and services shall be created from information provided by participating disability business enterprises. The Disability Business Enterprise Committee shall require such information as part of the application for certification or recertification.

2. The Committee may evaluate the appropriateness of including items in the list by utilizing customer references provided by applicants.

3. Such list shall be published as a catalog that includes commodity codes and shall be made available to all state entities, municipal entities, and the general public.

4. The DBE Committee shall publish a catalog annually, but may, as it deems necessary, amend such catalog at any time to reflect changes in availability of commodities or services.

5. The Chief Purchasing Officer shall utilize the list in implementing the program.

B. Items in the catalog shall be subject to deletion based on a determination by the DBE Committee, that such items are not available for State purchase or that a certified "disadvantaged disability business" has been unable to fulfill a contract for an item. Prior to the removal of any item for the catalog, the affected "disadvantaged disability business" shall be given written notification of intent and provided an opportunity for a hearing at the next scheduled meeting of the DBE Committee. Petitioners shall be informed in writing of the DBE Committee's determination within six (6) business days after the meeting. The appeals procedures shall be contained in the notification.

X. OUTREACH

A. State agencies and the Division of Purchasing shall periodically conduct meetings with disadvantaged disability businesses as appropriate, to inform them of procurement opportunities within the department or division.

B. State agencies and the Division of Purchasing shall use DBE newspapers as part of their regular advertising.

XI. REPORTING

A. The Division of Purchasing shall submit an annual report to the Disability Business Enterprise Committee of the following:

1. Listing of awarded contracts and value of procurements from small disadvantaged disability business for construction contracts and projects and state purchases of goods and services;
2. Outreach efforts made by the Division during the previous quarter; and
3. Number of small disadvantaged disability businesses that submitted bids and were rejected.

B. All entities awarded government contracts, through the Disability Business Enterprise Program, shall submit an annual report at the end of each year listing:

1. The number persons with disabilities working employed on government contracts awarded, through the Disability Business Enterprise Program;
2. The number of government contracts bid on, through the Disability Business Enterprise Program;
3. The number of government contracts awarded, through the Disability Business Enterprise Program;
4. The number of customers pre and post Disability Business Enterprise program involvement;
5. The number of non-government contracts pre and post Disability Business Enterprise program involvement;
6. The financial size of contracts pre and post Disability Business Enterprise program involvement;
7. The number of employees pre and post Disability Business Enterprise program involvement; and
8. Social Security Disability Income (SSDI) status pre and post Disability Business Enterprise program involvement.

XII. SEVERABILITY OF PROVISIONS

If any clause, sentence, paragraph or part of these rules or the application thereof to any person or circumstances shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said sections or their application to other persons or circumstances.

XIII. FORMS

The Commission's staff shall prepare and revise the forms referenced above, as necessary.

XIV. ENDNOTES

These endnotes are the text of several general laws and are provided for clarification and are not part of the regulation. They are subject to revision, as amended by the General Assembly.

¹ RIGL Chapter 37-2.2 Disability Business Enterprises

RIGL 37-2.2-1. Short title and purpose.

This chapter shall be known as the "Disability Business Enterprises Act." The purpose of this chapter is to carry out the state's policy of supporting the fullest possible participation of small disadvantaged businesses owned and controlled by persons with disabilities in state funded and state directed public construction, public projects, and in state purchases of goods and services. This includes assisting disadvantaged disability businesses throughout the life of contracts in which they participate.

RIGL 37-2.2-2. Definitions.

As used in this chapter, the following words and phrases shall have the following meanings unless the context shall indicate another or different meaning or intent:

- (1) "Persons with disabilities" or "person with a disability" shall mean any individual who has a physical or mental impairment which constitutes a substantial barrier to employment as certified by the department of behavioral healthcare, developmental disabilities, and hospitals.
- (2) "Small disadvantaged businesses owned and controlled by persons with disabilities " shall mean small business concern, which is at least fifty-one percent (51%) owned by one or more person(s) with disabilities or, in the case of a publicly owned

business, at least fifty-one percent (51%) of the stock of which is owned by one or more disabled person, whose management and daily business operations are controlled by one or more person(s) with disabilities, and have fifty or fewer employees.

(3) "A physical or mental impairment" shall mean any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

RIGL 37-2.2-3.1. Policy and applicability.

It is the policy of the state of Rhode Island that small disadvantaged disability businesses shall have the maximum opportunity to participate in the performance of procurements and projects as outlined in this chapter. This chapter shall apply to any and all state purchasing, including, but not limited to, the procurement of goods and services, construction projects, or contracts funded in whole or in part by state funds, or funds which, in accordance with a federal grant or otherwise, the state expends or administers or in which the state is a signatory to the construction contract.

The director of administration, in consultation with the governor's commission on disabilities, is authorized and directed to establish rules and regulation formulas for awarding contracts to small disadvantaged businesses owned and controlled by persons with disabilities in the procurement of goods, services, construction projects, or contracts funded in whole or in part by state funds, in accordance with section 37-2-9(b)(14) on or before January 1, 2013.

RIGL 37-2.2-4. Disability business enterprise committee - Membership - Duties.

(a) There is hereby established within the governor's commission on disabilities a committee, consisting of seven (7) persons, to be known as the disability business enterprise committee.

(b) The committee, shall consist of the director of the department of human services or his or her designee; the director of the department of behavioral healthcare, developmental disabilities, and hospitals or his or her designee; the director of the economic development corporation or his or her designee; the director of administration or his or her designee; and three (3) persons with disabilities appointed by the chairperson of the governor's commission on disabilities. All members of the committee shall serve without compensation. Of the number appointed originally under this chapter, one-third (1/3) shall be appointed for a term of one year; one-third (1/3) shall be appointed for a term of two (2) years; and one-third (1/3) shall be appointed for a term of three (3) years. Thereafter, vacancies created by expiration of terms shall be filled with appointments for terms of three (3) years. Members whose terms expire may be reappointed to succeed themselves. The chairperson of the governor's commission on disabilities or his or her designee shall serve as chairperson of the committee. The members of the committee shall elect a vice chairperson and other officers as are necessary from amongst themselves annually.

(c) The governor's commission on disabilities shall promulgate such rules and regulations, in accordance with the Administrative Procedures Act, chapter 35 of title 42, as are necessary and proper to ensure responsible management, operation, oversight of the committee, and ensure that all businesses referred to in section 37-2.2-3.1 meet all applicable government regulations and standards, including those of the United States department of labor, the state department of human services, and the chief purchasing officer with regard to developing a program which involves small disadvantaged businesses as contractors, 37-2-9(b)(14).

(d) The committee shall establish a procedure to certify small disadvantaged disability businesses that qualify under their regulation for a preference under 37-2.2-3.1 and submit a list of the certified small disadvantaged disability businesses and the products and services provided by them to the chief purchasing officer at least once a year. The chief purchasing officer shall utilize that procurement list in the program which involves small disadvantaged businesses as contractors established by 37-2-9(b)(14).

RIGL 37-2.2-5. Nonapplicability to road and highway construction businesses.

Notwithstanding anything to the contrary, the provisions of this chapter shall not apply to any business whose primary business is road or highway construction.

² Governor's Commission on Disabilities
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disabilities@gcd.ri.gov (e-mail) and
<http://www.disabilities.ri.gov/> (website)

³ RIGL 37-2-7 State Purchases - Definitions.

(4) "Construction" shall mean the process of building, altering, repairing, improving, or demolishing any public structures or building, or other public improvements of any kind to any public real property. It does not include the routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the state of Rhode Island in the usual course of their job.

(5) "Contract" shall mean all types of agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It shall include awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; purchase orders; and construction management contracts. It also includes supplemental agreements with respect to any of the foregoing. "Contract" does not include labor contracts with employees of state agencies.

(7) "Contractor" shall mean any person having a contract with a governmental body.

(11) "State governmental entity" means any entity created as a legislative body or a public or state agency by the general assembly or constitution of this state, except for municipal, regional, or county governmental entities.

(15) Procurement shall mean the purchasing, buying, renting, leasing, or otherwise obtaining of any supplies, services, or construction. It shall also include all functions that pertain to the obtaining of any supply, service, or construction item, including a description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(16) "Public agency" shall mean the Rhode Island industrial recreational building authority, the Rhode Island economic development corporation, the Rhode Island industrial facilities corporation, the Rhode Island refunding bond authority, the Rhode Island housing and mortgage finance corporation, the Rhode Island resource recovery corporation, the Rhode Island public transit authority, the Rhode Island student loan authority, the Howard development corporation, the water resources board corporate, the Rhode Island health and education building corporation, the Rhode Island higher education assistance authority, the Rhode Island turnpike and bridge authority, the Blackstone Valley district commission, the Narragansett Bay water quality management district commission, Rhode Island telecommunications authority, the convention center authority, Channel 36 foundation, the Rhode Island lottery commission, their successors and assigns, and any other body corporate and politic which has been or will be created or established within this state excepting cities and towns and the board of governors for higher education for all purchases which are funded by restricted, sponsored or auxiliary monies .

(20) "Services" as used in this definition shall mean the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services.

"Services" does not include labor contracts with employees of state agencies.

(22) "State" shall mean the state of Rhode Island and any of its departments or agencies and public agencies.

(28) "State agency" means any department, commission, council, board, bureau, committee, institution, or other governmental entity of the executive or judicial branch of this state not otherwise established as a body corporate and politic, and includes, without limitation, the board of governors for higher education except for purchases which are funded by restricted, sponsored, or auxiliary moneys and the board of regents for elementary and secondary education.

(29) "Governmental entity" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, or government corporation of the executive, legislative, or judicial branches of state, federal, and/or local governments.

⁴ RIGL 37-2.2-1 Short title and purpose, see footnote 1 above

⁵ RIGL 37-2.2-3.1 Policy and applicability, see footnote 1 above

⁶ RIGL 37-2.2-4(d) Disability business enterprise committee -- Membership -- Duties, see footnote 1 above