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Chapter J Disability Business Enterprises

***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”³; “Persons with disabilities” or “person with a disability”⁴; “Rehabilitation facility”⁵; “Small disadvantaged disability businesses owned and controlled by persons with disabilities”⁶; “State agency”⁷; “Vocational rehabilitation services”⁸; and used in the context of “Products”⁹ and Services¹⁰ produced by persons with disabilities” are defined in RI GL 37-2.2-3 and “disadvantaged [disability] businesses”¹¹ as used in the context of RI GL 37-2.2-1”

C. The terms: “Construction”¹²; “Contract”¹³; “Contractor”¹⁴; “Governmental body”¹⁵; Procurement¹⁶; “Public agency”¹⁷; “The State”¹⁸, and As used in the context of “Procurement”, the term “services”¹⁹ are defined in RI GL 37-2-7.

III. PURPOSE²⁰

The purpose of this regulation is to implement RIGL 37-2.2 and carry out the state’s policy²¹ of supporting the fullest possible participation of small disadvantaged businesses owned and controlled by persons with disabilities or where seventy-five percent (75%) of the employees are persons with disabilities, or non-profit rehabilitation facilities in state funded and state directed public construction and projects and in state purchases of goods and services. This includes assisting disadvantaged disability businesses and non-profit rehabilitation facilities throughout the life of contracts in which they participate.

Whenever any products made, manufactured by, or services provided by persons with disabilities in nonprofit rehabilitation facilities, or in profit making facilities where seventy-five percent (75%) of the employees are disabled, meet the requirements of any department, institution, or agency supported, in whole or in part, by the state as to quantity, quality, and price, those products shall have preference over products or services from other providers.²²

IV. CERTIFICATION OF DISADVANTAGED BUSINESS ENTERPRISES OR REHABILITATION FACILITIES²³

A. A disadvantaged disability business or rehabilitation facility shall apply to the disability business enterprise committee for certification as a “disadvantaged disability business or rehabilitation facility” 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 rehabilitation facility shall apply for recertification, on the anniversary of the last awarding of certification or recertification, to the disability business enterprise committee as a “disadvantaged disability business or rehabilitation facility” 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 or rehabilitation facility” at a scheduled meeting of the committee. The “disadvantaged disability business or rehabilitation facility” 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 or rehabilitation facility” 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. PREFERENCE FOR PRODUCTS AND SERVICES PRODUCED BY PERSONS WITH DISABILITIES²⁴

A. Whenever any products made or manufactured by, or services provided by a disadvantaged disability business or rehabilitation facility meet the requirements of any state agency as to quantity, quality, and price, those products or services shall have preference over products or services from other providers.

B. All state agencies shall purchase such articles made or manufactured and services provided by persons with disabilities.

C. Any political subdivision of the state may purchase those articles and services directly from those agencies.

IX. PROCUREMENT

A. Implementation of the Disability Business Enterprise purchasing preference program shall be in accordance with purchasing rules and procedures established by the Chief Purchasing Officer for small disadvantaged businesses pursuant to section 37-2-9(b)(14)²⁵ of the general laws.

B. The Commission's Disability Business Enterprise Committee shall prepare a list (in cooperation with the state office of rehabilitation services) describing the styles, designs, sizes, and varieties of articles made by persons with disabilities and available services and subcontract work that those persons can provide.

1. The list shall be created from information provided by participating disability business enterprises and rehabilitation facilities. The DBE 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.

C. 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 or rehabilitation facility" 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 or rehabilitation facility" 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 or rehabilitation facilities 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

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

A. Listing of awarded contracts and value of procurements from small disadvantaged disability business or rehabilitation facilities for construction contracts;

B. Outreach efforts made by the Division during the previous quarter; and

C. Number of small disadvantaged disability businesses or rehabilitation facilities that submitted bids and were rejected.

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 History: Proposed on November 15, 1996 Public Hearing on December 16, 1996 Adopted on December 16, 1996 Effective on January 15, 1997 Technical Revisions on October 10, 1997 Advertised October 21, 1999 Public Hearing on November 22, 1999 Adopted December 13, 1999 Effective on March 6, 2000 Amendments proposed on April 23, 2001 Hearing June 11, 2001 Adopted July 18, 2001 Effective September 3, 2001

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³ RIGL 37-2.2-2 (6) "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.

⁴ RIGL 37-2.2-2 (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 Human Services or the Department of Mental Health, Retardation, and Hospitals

⁵ RIGL 37-2.2-2 (3) "Rehabilitation facility" shall mean a facility, which is operated for the primary purpose of providing vocational rehabilitation services to and gainful employment for the persons with disabilities. The rehabilitation services, listed below, may be provided directly or by the facility's parent corporation. The facility must provide singly or in combination one or more of the following rehabilitation services for persons with disabilities:

Comprehensive rehabilitation services which shall include under one management medical, psychological, social, and vocational services;

Testing, fitting, or training in the use of prosthetic and orthodontic services;

Pre-vocational evaluation or recreational therapy;

Physical and occupational therapy;

Speech and hearing services;

Psychological and social services;

Evaluation;

Personal and work adjustment;

Vocational training in combination with other rehabilitation services;

Evaluation or control of special disabilities; and

Transitional or long-term employment for persons who have severe disabilities and cannot be readily absorbed into the competitive labor market.

⁶ RIGL 37-2.2-2 (5) "Small disadvantaged disabled businesses owned and controlled by persons with disabilities" shall mean small business concern, which:

- is at least fifty-one percent (51%)
- a) Owned by one or more persons with disabilities or

b) 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 person with a disability,

- whose management and daily business operations are controlled by one or more person(s) with a disability; and
- have fifty or fewer employees

⁷ RIGL 37-2.2-3 “State agency” shall mean a governmental body or public agency, and any department, institution, or agency supported, in whole or in part, by the state.

⁸ RIGL 37-2.2-2 (7) “Vocational rehabilitation services” shall mean any goods and services including: diagnostic and related services necessary to render a person with a disability fit to engage in a gainful occupation and services to the families of persons with a disability when those services will contribute substantially to the rehabilitation of those individuals.

⁹ RIGL 37-2.2-2 (2) “Products” shall mean any goods or merchandise provided by persons with disabilities if not less than seventy-five percent (75%) of the man hours or direct labor required for such products are performed by persons with disabilities.

¹⁰ RIGL 37-2.2-2 (4) “Services” shall mean any services provided by persons with disabilities if not less than seventy-five (75%) of the work hours or direct labor required for such services are performed by persons with disabilities.

¹¹ RIGL 37-2.2-1 “small disadvantaged businesses owned and controlled by persons with disabilities or where seventy-five percent (75%) of the employees are persons with disabilities”

¹² RIGL 37-2-7 (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.

¹³ RIGL 37-2-7 (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.

¹⁴ RIGL 37-2-7 (7) “Contractor” shall mean any person having a contract with a governmental body.

¹⁵ RIGL 37-2-7 (11) “Governmental body” shall mean any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, including, without limitation, the board of governors for higher education except for purchases which are funded by restricted, sponsored or auxiliary monies for the period through July 1, 1999, as provided for in subdivision (16) of this section, and board of regents - elementary and secondary education or other establishment of the executive, legislative or judicial branch of the state

¹⁶ RIGL 37-2-7 (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.

¹⁷ RIGL 37-2-7 (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 board of governors for higher

education for all purchases which are funded by restricted, sponsored or auxiliary monies, 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. The board of governors for higher education for all purchases which are funded by restricted, sponsored or auxiliary monies shall be included in the definition of “public agency” only through July 1, 1999

¹⁸ RIGL 37-2-7 (22) “The State” shall mean the state of Rhode Island and any of its departments or agencies and public agencies

¹⁹ RIGL 37-2-7 (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.

²⁰ RIGL 37-2.2-1

²¹ RIGL 37-2.2-3.1 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 products as outlined below. This chapter shall apply to any and all state purchasing, including, but not limited to the procurement of goods and services and 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.

²² RIGL 37-2.2-3

²³ RIGL 37-2.2-4 (4)

²⁴ RIGL 37-2.2-3

²⁵ RIGL 37-2.2-4 (4)