

525–RICR-20-00-1

TITLE 525 - GOVERNOR'S COMMISSION ON DISABILITIES

CHAPTER 20 - CIVIL RIGHTS AND CERTIFICATION

SUBCHAPTER 00 - N/A

PART 1 – SMALL DISADVANTAGED DISABILITY BUSINESS ENTERPRISES

1.1. STATUTORY AUTHORITY

R.I. Gen. Laws Chapter 37-2.2 Disability Business Enterprises Act.

1.2 Purpose

The purpose of this regulation is to implement R.I. Gen. Laws Chapter 37-2.2 and “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 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.”

1.3 Definitions

A. 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. “Commission” means the “Governor’s Commission on Disabilities”.
2. “Construction” means as defined in R.I. Gen. Laws § 37-2-7.
3. “Contract” means as defined in R.I. Gen. Laws § 37-2-7.
4. "Hearing Board" means the R.I. Gen. Laws § 42-51-6.1 Governor’s Commission on Disabilities - Hearing boards.
5. “Persons with disabilities” means as defined in R.I. Gen. Laws § 37-2.2-2(1).
6. “Small business concern”, means as defined pursuant to 15 U.S.C. Chapter 632(a) the Federal Small Business Act, but have fifty (50) or fewer employees.
7. “Small disadvantaged disability businesses owned and controlled by persons with disabilities” means as defined in R.I. Gen. Laws § 37-2.2-2(2).

8. "The State" means as defined in R.I. Gen. Laws § 37-2-7.

1.4 Certification of Small Disadvantaged Disability Business Enterprises (SDBE)

1.4.1 Ownership and Control Requirements

- A. An applicant must satisfy either §§ 1.4.1(1), (2) or (3) of this Part, as well as §§ 1.1.1(4), (5), and (6) of this Part (below) in order to be considered fifty-one percent (51%) owned by members with disabilities:
1. In a corporate form of organization, the shareholder(s) with disabilities of the corporation must own at least fifty-one percent (51%) of each and every class of stock, including fifty-one percent (51%) of all voting stock in the corporation; or
 2. In a partnership form of organization, the partner(s) with disabilities must own at least fifty-one percent (51%) of the partnership; or
 3. In any other form of organization, the owner(s) with disabilities must own at least fifty-one percent (51%) of the business interest of the organization including but not limited to fifty-one percent (51%) of the ownership of assets, dividends, and intangible assets such as copyrights and patents; and
 4. The owner(s) with disabilities 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
 5. The owner(s) with disabilities must substantially share in all the risks assumed by the business firm, and
 6. 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 fifty-one percent (51%) ownership of the business firm by persons with disabilities.
- B. To prove that the owner(s) with disabilities possess control over the business, an applicant must satisfy all the requirements of §§ 1.4.1(1), (2), and (3) of this Part (below):
1. The owner(s) with disabilities owners must demonstrate that they have control over:
 - a. The day-to-day management of the business, and
 - b. The policy-making mechanism of the business.

- c. The ownership and control by the owner(s) with disabilities must be real, substantial, and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership document.
 - d. The owner(s) with owner(s) with disabilities 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:
 - (1) 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.
 - (2) Have the authority to hire and fire employees, including those to whom management authority is delegated.
 - (3) Be an authorized signature on all corporate accounts-checking, savings, and other financial accounts.
 - (4) Have a thorough knowledge of the financial structure of the business and authority to determine all financial affairs.
 - (5) Have the capability, knowledge and experience required to make decisions regarding the particular type of work engaged in by the SDBE.
 - (6) Have displayed independence and initiative in seeking and negotiating contracts, accepting and rejecting bids and in conducting all major aspects of the business.
2. Any of the following conditions creates an irrefutable presumption that the owners do not have control of the business that is applying for certification:
- a. If the owner(s) with disabilities are current employees of a non-disability business corporation, or individual, or partnership which has a significant ownership interest in the business firm applying for certification.
 - b. If the directors and/or management of the applicant firm is substantially the same as the affiliated non-disability firm.
 - c. If the applicant is a wholly owned subsidiary of a non-disability firm.
 - d. If the applicant has an extremely dependent relationship on a non-disability firm or individual.

3. Any agreement, option, right of conversion, scheme or other restraint, which, if exercised, would result in less than dominant control by the owners with disabilities is prohibited.

1.4.2 Substantial Investment in Business Requirement

- A. The owner(s) with disabilities 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.
- B. 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.
- C. There will be an irrefutable presumption that the owner(s) with disabilities 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-disability corporation, partnership or individual that has a significant interest in the applicant.

1.4.3 Continuing Operational Requirement

The applicant must be an ongoing business concern; it must demonstrate to the satisfaction of the Disability Business Enterprise Committee that it was not established solely for the purpose of competing for SDBE programs.

1.4.4 Certification

- A. A small disadvantaged disability business shall apply to the Disability Business Enterprise Committee for certification as a "SDBE" by:
 1. Completing an on-line Supplier Registration Package (<http://www.purchasing.ri.gov>), including the selection of commodity codes indicating the products and services offered for sale to the State;
 2. SDBEs are also encouraged to register with RIFANS to receive automatic email alerts for Division of Purchases' solicitations. RIFANS Supplier Portal is @ <http://controller.admin.ri.gov/iSupplier/isup/index.php>; and
 3. Submitting RI GCD "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 six (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 six (6) business days of that action. The appeal procedures will be attached to the written notification of denial of certification.

1.4.5 Annual Recertification and Reporting

- A. A small disadvantaged disability business owned 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 “SDBE” by:
 - 1. Completing or updating on on-line RIFANS Supplier Portal registration process, including the selection of commodity codes indicating the products and services offered for sale to the State;
 - 2. Submitting RI GCD “Disability Business Enterprise Application for Recertification” and only supporting documentation that indicates changes since the last submission; and
 - 3. A report of:
 - a. The number persons with disabilities employed on government contracts awarded, through the SDBE Program;
 - b. The number of government contracts bid on, through the SDBE Program;
 - c. The number of government contracts awarded, through the SDBE Program;
 - d. The number of customers pre and post SDBE program involvement;
 - e. The number of non-government contracts pre and post SDBE program involvement;

- f. The financial size of contracts pre and post SDBE program involvement;
 - g. The number of employees pre and post SDBE program involvement; and
 - h. Social Security Disability Income (SSDI) status pre and post SDBE program involvement.
- 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 six (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 six (6) business days of that action. The appeal procedures will be attached to the written notification of rejection of certification.

1.4.6 Revocation of Certification

- A. Grounds for revocation of SDBE 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 "SDBE" at a scheduled meeting of the committee. The "SDBE" shall be notified that the committee will be considering the application, at least six (6) business days in advance of the meeting.
- C. The "SDBE" shall receive written notification of the actions of the Disability Business Enterprise Committee concerning their certification, within six (6) business days of that action. The appeal procedures will be attached to the written notification of revocation of certification.

1.4.7 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 twenty (20) business days of the receipt of the Disability Business Enterprise Committee's denial of certification to the Commission.
- B. The Commission's Hearing Board shall conduct the appeal hearing in accordance with the Administrative Appeals Act, R.I. Gen. Laws Chapter 42-35.
- C. Open Hearings:
 - 1. The hearings will be open to the public and the applicant shall appear and may bring a representative and witnesses. The Chairperson of the Hearing Board 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.
 - 2. The Hearing Board reserves the right to conduct a closed meeting pursuant to R.I. Gen. Laws Chapter 42-46-5(a).
- D. Conduct at the Hearing:
 - 1. 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 Hearing Board or its designee will have the authority to take any action necessary to enforce these standards during the course of the hearing.
 - 2. Stipulations:
 - a. Both Hearing Board 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.
 - b. Oral stipulation may be made on the record, at the discretion of the Chairperson, during the course of the hearing.
- E. Judicial Review:
 - 1. An applicant may seek judicial review of any final administrative decision of the Commission and/or the Disability Business Enterprise Committee in accordance with R.I. Gen. Laws Chapter 42-35.

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