

MINORITY BUSINESS ENTERPRISE COUNCIL'S CERTIFICATION REGULATIONS TO EXECUTIVE ORDER 02-05

1. DEFINITIONS

Certification. The process by which the Minority Business Enterprise Council (“MBEC”), or its designee, certifies businesses as eligible to participate on City contracts as minority-owned, woman owned, and/or disabled-owned business enterprises (“M/W/DSBEs”).

Commodity Code. MBEC’s classification of the type of equipment, supplies, materials, services, or manufacture that the M/W/DSBE primarily engages in the conduct of its business.

Control. The power, authority and responsibility to make day-to-day operational decisions and policy decisions on matters of management, operations and finances.

Disabled Business Enterprise or DSBE. A for-profit business certified by MBEC that is:

- A sole proprietorship owned and controlled by a disabled person; or
- A partnership controlled by one or more disabled persons in which at least 51% of the beneficial ownership interests are held by one or more disabled persons; or
- A corporation or other entity controlled by one or more disabled persons in which at least 51% of the beneficial ownership interests in such corporation or entity are owned by one or more disabled persons.

Disabled Person. A person who has a physical or mental impairment that substantially limits one or more of his or her major life activities, such as caring for oneself, performing manual tasks, i.e., walking, seeing, hearing, speaking, breathing, learning and working.

Disadvantaged Business Enterprise (DBE) and Airport Concessionaire Disadvantaged Business Enterprise (ACDBE). A for-profit business participating in federally assisted contracts as a contractor or concessionaire, which is owned and controlled by socially and economically disadvantaged individuals as defined in Title 49 of the Code of Federal Regulations Parts 26 and 23.

Majority Owned Business. Any for-profit business that is not beneficially owned and controlled by a minority, woman or disabled person.

Minority Business Enterprise Council (MBEC). A central services unit in the Office of the Director of Finance with the authority and responsibility to oversee the implementation and enforcement of Executive Order 02-05. MBEC also participates as a member of the Pennsylvania Unified Certification Program and certifies DBEs and ACDBEs pursuant to 49 CFR Parts 23 and 26.

Minority Business Enterprise or MBE. A for-profit business certified by MBEC, that is:

- A sole proprietorship owned and controlled by a Minority Person; or
- A partnership controlled by one or more Minority Persons in which at least 51% of the beneficial ownership interests are owned by one or more Minority Persons; or
- A corporation or other entity controlled by one or more Minority Persons in which at least 51% of the beneficial ownership interests in such corporation or entity are owned by one or more Minority Persons.

Minority Person. A person who is:

- African American or Black, having origins in any of the Black racial groups of Africa;
- Hispanic American, including persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- Asian American, including persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, Hong Kong, India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; or
- Native American, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

Woman Business Enterprise or WBE. A for-profit business certified by MBEC that is:

- A sole proprietorship owned and controlled by a woman; or
- A partnership controlled by one or more women in which at least 51% of the beneficial ownership interests are held by one or more women; or
- A corporation or other entity controlled by one or more women in which at least 51% of the beneficial interests in such corporation or entity are owned by one or more women.

2. ADMINISTRATIVE REQUIREMENTS

A. To ensure that only businesses which are beneficially owned and controlled in both form and substance by minorities, women or disabled persons compete for opportunities arising under Executive Order 02-05, any minority business enterprise, woman business enterprise or disabled owned business enterprise desiring these opportunities must be certified by MBEC or its designee as an MBE, WBE and/or DSBE in accordance with the procedures set forth herein. The certification procedure adopted pursuant to this Executive Order must inspire public confidence that the certified businesses are in fact bona fide MBEs, WBEs and DSBEs. Certification pursuant to this Regulation relates solely to the ownership and control of the certified business as determined in accordance with these standards and not to the certified business' ability to perform work on a specific contract. The City, through its agencies, reserves the right to evaluate a business' ability to satisfy financial, technical or other criteria separate and apart from the certification process provided for in this Regulation. Any designee of MBEC authorized to carry out the certification procedure authorized herein must be approved by the Director of Finance.

B. Any business that wishes to be certified as a MBE, WBE or DSBE shall apply to MBEC for such certification by completing and submitting a Certification Affidavit which includes the submission of supporting business documents as prescribed by the Certification Affidavit. The MBEC reserves the right to return, as incomplete, any application that does not contain the information required by the Certification Affidavit. Any documentation required by MBEC in connection with its review of an application shall be submitted by the applicant in a timely manner which shall be no more than fifteen (15) business days from the date of MBEC's written request; applicants failing to submit the documentation within this time period will have their application returned as incomplete.

C. Upon timely receipt of all requested information, MBEC will evaluate the submitted information to determine whether the applicant meets the definition of M/W/DS-BE as defined herein. MBEC, as it deems

necessary to make a certification determination, may request any additional information from the applicant and inspect the applicant's business premises. Prior to making a certification determination, MBEC may, in its discretion, request an interview with the applicant at its place of business and/or request an interview with the applicant at MBEC's offices.

D. MBEC shall complete its evaluation and make a certification determination within ninety (90) days of its receipt of a completed application unless MBEC notifies the applicant that an extension of time is necessary in order to complete its evaluation; in no event shall a certification determination by the MBEC take longer than 120 days. The applicant shall be notified of MBEC determination in writing.

(1) If a business is denied certification, MBEC shall notify the business of the reasons for such denial. A business may file a written appeal with MBEC within ten (10) business days of the date of notification, refuting the denial within the context of the existing certification record. MBEC will make a written determination on the appeal within five (5) business days of MBEC's receipt of the appeal; if the appeal is denied by the MBEC, the applicant may appeal in writing, within five (5) business days of receipt of the MBEC's determination, to the Director of Finance or his/her designee whose decision shall be final. A business that is denied certification, including any affiliates of that business that are essentially the same entity, may not re-apply for certification for a period of twelve (12) months from the date of MBEC's notification or the date of the Director of Finance's denial, whichever is later.

(2) If a business is certified, it shall be designated under its relevant Commodity Code(s) as "Certified" in MBEC's Directory of Certified Firms for a period of five (5) years from the date of certification unless certification is revoked by MBEC or withdrawn by the business before the expiration of five (5) years. It shall be an on-going obligation of the business to provide, upon request, all information necessary to assist the MBEC in assessing the continuing validity of the business and its status as a bona fide M/W/DSBE. Each year the business shall submit, on a form provided by MBEC, an "Affidavit of Continuing Eligibility;" failure to return the form will result in revocation of certification. At any time, a business shall notify MBEC, in writing, if there is a change in the business that affects its status as a M/W/DSBE, including changes in location, ownership, control, management or modification in the provision of services or supplies previously listed in the MBEC Directory. No change shall be accepted for purposes of modifying the certification, including without limitation, the designated Commodity Code(s) until written approval is received from MBEC.

E. At the expiration of five (5) years, a certified business may re-apply for certification by completing and submitting a Recertification Affidavit which is subject to the same administrative requirements as the original application for certification. Only certified businesses that can demonstrate consistently active pursuit of City contracts or City-Related Projects under Executive Order 02-05 during their certification term are eligible for recertification.

3. STANDARDS FOR CERTIFICATION

A. Ownership and Control. In order to be certified as a M/W/DSBE, the business must satisfy the following criteria: at least fifty-one percent (51%) of the interests in the business must be beneficially owned by U.S. citizens or a permanent resident alien who are minority persons or women or disabled persons and such persons must occupy the majority of management and board positions and control all decisions concerning the business, including, but not limited to, day-to-day decisions on matters of operation. The ownership and control must be real, substantial, and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. Control by the minority, woman or disabled person must be unfettered. The minority, woman or disabled owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the

substance rather than the form of arrangements. MBEC may consider all relevant factors, including the following:

- (1) Ownership history of the business: when was the business established and who were the original owners;
- (2) Is the business sufficiently capitalized to perform on City contracts and how did the business owner(s) acquire capital for the business;
- (3) Does the owner(s) have the requisite expertise (e.g., education, license, experience, and union membership) to operate the business;
- (4) Is there any relationship with a Majority Owned Business that affects independent ownership or control by the minority, woman or disabled owner(s); and/or
- (5) Are there any legal restrictions (e.g., shares held in trust, purchase agreement, management contract) on the ownership or control by the minority, woman or disabled owner(s).

B. Determination of Disability. In addition to satisfying ownership and control, the owner(s) of an eligible disabled owned business must demonstrate the existence of a physical or mental impairment which substantially limits one or more major life activities (i.e., caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working). The impairment must be evaluated through a comprehensive diagnostic study, and in the case of a mental impairment through a psychiatric or psychological evaluation, which is sufficient to determine that a medically recognized physical or mental impairment presently exists and that it substantially limits one or more major life activities. Evidence of disability shall be supported by a record of such impairment establishing eligibility under a state vocational rehabilitation program or similar entity recognized by MBEC.

4. RECIPROCAL CERTIFICATION

A. MBEC may certify, through reciprocity, a M/W/DSBE that is currently certified by another local, state or federal government-operated certification program which employs standards that ensure that businesses so certified are beneficially owned and controlled in both form and substance by minorities, women or disabled persons.

B. An applicant that wishes to receive reciprocal certification must submit a Certification Affidavit to the MBEC, completing those parts designated for reciprocal certification, and a certification letter from its original government-certifying agency. The business shall be designated under its relevant Commodity Code(s) as "Certified" in the MBEC Directory of Certified Businesses for a period of time not to exceed the expiration date of its original certification or five (5) years, whichever is sooner unless certification is earlier revoked by the MBEC or the original certifying agency.

C. Each year the business shall submit, on a form provided by the MBEC, an "Affidavit of Continuing Eligibility-Reciprocal Certification;" failure to return the form will result in revocation of certification. At any time, a business shall notify the MBEC, in writing, if there is a change in the business that affects its status as a M/W/DSBE, including revocation of certification by its original government certifying agency, changes in location, ownership, control, management or modification in the provision of services or supplies previously listed in the MBEC Directory. No change shall be accepted for purposes of modifying the

certification, including without limitation, the designated Commodity Code(s) until written approval is received from MBEC.

5. FEDERAL CERTIFICATION

A. MBEC, as a member of the Pennsylvania Unified Certification Program, certifies DBEs and ACDBEs pursuant to 49 CFR Parts 23 and 26. Only firms certified as DBEs or ACDBEs by the Pennsylvania Unified Certification Program may be counted towards DBE or ACDBE participation goals on any federally assisted contracts requiring participation of disadvantaged business enterprises. All DBEs and ACDBEs will be listed in the Pennsylvania Unified Certification Program Directory. Procedures and forms for the certification of DBEs and ACDBEs in Pennsylvania are contained in a document entitled, "Pennsylvania Unified Certification Program Procedures Manual."

B. Applicants wishing to compete for opportunities on federally assisted contracts shall submit a complete Uniform Certification Application to one of the following members of the Pennsylvania Unified Certification Program: Allegheny County, MBEC, PaDOT, Port Authority of Allegheny County or SEPTA.

C. All denials of DBE or ACDBE certification or removal of eligibility may be appealed, solely, through the Pennsylvania Unified Certification Program.

6. DECERTIFICATION

A. A MBE, WBE or DSBE may have its certification revoked by MBEC for the following reasons:

(1) The certified business has changed to the extent that the business is no longer beneficially owned and controlled by minority persons, women or disabled persons;

(2) An indictment or conviction of the owner(s) or certified business for a criminal offense related to obtaining, attempting to obtain or performing a public or private contract;

(3) Evidence that the certified business lacks business integrity and honesty. Such evidence may include initiation or completion of debarment proceedings against the business by a government agency;

(4) The certified business is engaging in a business that is different in nature and character from the type of business disclosed in its original Certification Affidavit such that the original basis for determining ownership and control is inapplicable to the present business;

(5) The certified business has had its eligibility revoked by another government certifying program; and/or

(6) Discovery that untrue or misleading information was provided by the certified business to the MBEC during its certification review.

B. MBEC shall notify the business in writing of its intent to decertify stating the reasons and findings to support decertification. The business may refute MBEC's decision by filing an appeal to the MBEC in writing within ten (10) days of the date of MBEC's notice to decertify. If the business does not file an

appeal, the decertification shall become final. If the appeal is denied by MBEC, the business may appeal in writing, within five (5) business days of receipt of MBEC's determination, to the Director of Finance or his/her designee whose decision shall be final. Pending the decertification, the business remains eligible to participate under Executive Order 02-05. A decertified business may not re-apply for certification for three (3) years from the date of final notice.

