



CITY OF BOSTON

**~~MINORITY AND WOMEN BUSINESS ENTERPRISE OFFICE~~
SUPPLIER DIVERSITY PROGRAM**

CERTIFICATION REGULATIONS



I. TITLE AND APPLICABILITY

These regulations are written pursuant to the 1987 Executive Order and Ordinance "Promoting Minority and Women Business Enterprises in the City of Boston" and shall be known and cited as the Certification Regulations of the ~~Minority and Women Business Enterprise (M/WBE) Office~~ **Supplier Diversity Program** and shall govern the process of certification and decertification of minority or woman-owned enterprises by the **Supplier Diversity Program M/WBE Office**. These regulations supersede all existing rules, regulations and practices heretofore applicable to procedure and proceedings before ~~the creation of the Supplier Diversity Program M/WBE Office~~ in regards to certification. They shall be construed to secure the just, speedy and fair determination of every certification matter.

II. DEFINITIONS

As used herein the following words shall have the following meanings unless the context clearly indicates otherwise.

"Appellant": any business that has made an appeal to any determination of the **Supplier Diversity Program M/WBE Office**.

"Applicant": a business that applies for certification to the **Supplier Diversity Program M/WBE Office**.

"Application": the forms provided by the Supplier Diversity Program and all documentation requested by the **Supplier Diversity Program M/WBE Office** that an applicant must complete before the Supplier Diversity Program will consider a business for certification, ~~whether paper or digital~~.

"Certification": means the process by which a business enterprise meets the standards promulgated by the **Supplier Diversity Program M/WBE Office** and the **Supplier Diversity Office (SDO) State Office of Minority and Women Business Assistance (SOMWBA)**.

"Certification Unit": the division of the **Supplier Diversity Program M/WBE Office** whose responsibility it is to oversee all certification matters pertaining to minority or woman-owned businesses.

"City": means the City of Boston.

"Contract": means a legally enforceable agreement for the provision of supplies, labor, materials, services, construction, franchises, concessions, or leases granted by or on behalf of the City.

"Eligible contract dollars": shall refer to the total dollar amount on contracts awarded or expended as set forth under the provisions of the 1987 Executive Order and Ordinance "Promoting Minority and Women Business Enterprise Development in the City of Boston".

"Fiscal Year": means the period from July 1 through June 30.

"Minority person": means a citizen or legal resident alien of the United States who is Black, **Latino/Hispanic**, Native American, Asian or Cape Verdean, as defined by **SDO SOMWBA**.

"Minority/Woman Business Enterprise (M/WBE)": means a business which is owned, controlled, and managed by one or more minority persons or women who are citizens or legal resident aliens of the United States.

"NonProfit Organization": means an organization composed as a ~~not for profit notforprofit~~ enterprise that also meets the criteria outlined herein.

III. CERTIFICATION CRITERIA FOR PROFIT AND NONPROFIT ORGANIZATIONS

A. The M/WBE Certification Unit will certify only those businesses which fulfill the requirements detailed below. An applicant's business must meet each of the following criteria:

1. Owners of the business are minority persons or women.
2. Minority or women partners/shareholders must own at least ~~fifty one~~ ~~fiftyone~~ percent (51%) of the business.
3. Minority or women owners must possess dominant control of the business.
4. Minority or women owners must be substantial investors in the business.
5. The business must be an ongoing concern as defined herein.

B. Criteria Requirements include the following:

1. **Minority Requirements:**

“Minority person”, as defined herein, is further defined as follows:

Black	All persons having origins in any of the Black ~~racial~~ groups of Africa, including, but not limited to, African Americans, and all persons having origins of the original peoples of the Cape Verdean Islands. Additionally, Caribbean natives of African descent. ~~or the Caribbean.~~
~~Cape Verdean~~	~~All persons having origins in any of the original peoples of the Cape Verdean Islands.~~
Latino/Hispanic	All persons having ~~their~~ origins in any of the ~~peoples~~ of Latin America, including ~~Spanish speaking peoples of~~ Mexico, Puerto Rico, Cuba, Central or South America, Brazil, or the Caribbean Islands.
Native American/Indigenous Person	All persons having origins in any of the ~~original indigenous~~ peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia, and persons having origins in any of the indigenous people of North America and who are recognized as an Indian by a tribe or tribal organization.
Asian	All persons having origins in any of the original peoples of the Far East, South East Asia, the Indian Subcontinent or the Pacific islands. ~~This area includes, for example: China, Japan, Korea, Philippine Islands, and Samoa.~~

2. **Ownership Requirements:** "Owned" means that one or more minority persons or women have dominant control of the use of tangible and intangible property of the business. An applicant must satisfy criteria below to be considered 51% owned by a minority or woman.

- a. In the case of a corporation, at least fifty one percent (51%) of all classes of voting stock and/or interests of such corporation must be controlled by one or more Minority Persons or Women.
- b. In the case of a partnership, one or more Minority Persons or Women must have dominant control of at least fifty one percent (51%) of such a partnership interest.

- c. In the case of a limited partnership, the Minority Persons or Women must act as general partners or control at least fiftyone (51%) of the partnership interest of such limited partnership.
 - d. In the case of a joint venture, one or more Minority Persons or Women must possess at least fifty one percent (51%) of the controlling interest of such joint venture.
 - e. In the case of a sole proprietorship, the Minority Person or Woman must have dominant control of the tangible and intangible property of the business.
 - f. In any other form of business organization, one or more Minority Persons or Women must have dominant control of the use of property (tangible/intangible) for at least fifty one percent (51%) of the business.
 - g. An ownership interest held by one or more Minority Persons or Women shall not qualify as being an interest held by said Person(s) if an agreement, option, scheme, security interest, or document would, if exercised, result in less than fifty one percent (51)% control of the business and/or dominant control of the business by one or more Minority Persons or Women.
 - h. Any business must wait six, (6) months following the transfer of stock before applying for certification by the Supplier Diversity Program.
3. **Control Requirements:** To prove that the minority or woman owner possesses dominant control over the business, an applicant must satisfy each of the requirements of (a) and (b) below:
- a. An applicant must establish that they have dominant control of:
 - i. Every aspect of the day-to-day management of the business, (including, but not limited to, purchase of goods, equipment, business inventory, and services) and
 - ii. The policy making decisions of the business.
 - b. An applicant must establish their dominant control by providing substantial evidence that they meet each of the following:
 - i. They have dominant control over the purchase of goods, equipment business, inventory, and services needed in the day-to-day operation of the business, and
 - ii. They have the authority to hire and fire employees (except in the case of worker-owned cooperatives), and
 - iii. They control corporate accounts (escrow, savings, checking, and any other financial accounts), and
 - iv. They have a thorough knowledge of the financial structure of the business and control the overall financial affairs of the business, and
 - v. They have the capability, knowledge, and experience required to make decisions regarding the particular type of work performed by the business, and
 - vi. They have displayed independence and initiative in seeking and negotiating contracts, accepting and rejecting bids, and in conducting all major aspects of the business.

- c. Any one of the following conditions creates a rebuttable presumption that the minority or women owners do not have dominant control of the business that is applying for certification:
 - i. The minority or women owners are current employees of a non-minority business organization or individual which possesses ownership interest in the applicant's business, or
 - ii. The directors and/or management of the applicant business are substantially the same as those in a non-minority or non-women business with which the applicant is affiliated, or
 - iii. The applicant is a wholly-owned subsidiary of a non-minority or non-women firm, or
 - iv. The applicant has a substantially dependent relationship with a nonminority or non-women business, or
 - v. The applicant has the same business location as a nonminority or non-women business which is engaged in substantially similar business activities.
 - vi. Any agreements, options, schemes or documents that will create any rights which, if exercised, would result in less than 51% dominant control by the minority or women owners is prohibited.

4. **Substantial Investment In Business Requirement:** The minority or women owners must establish their substantial investment in the business. Proof of such substantial investment must be established by producing evidence of the following:

- a. They have a substantial investment of money in the business, or
- b. Their investments in the business are in the form of capital, equipment, contribution of property, space, patents, and/or copyrights.

5. **Ongoing Concern Requirement :** The applicant must be an on-going concern and must demonstrate to the satisfaction of the Certification Unit that the business has been actively seeking contracts or orders and engaging in regular business activities. An applicant should be prepared to document a business plan and consistent business activity, including recently-awarded contracts.

In the case of a start-up business, applicants should be prepared to document contract bid responses, business plan, and other support information concerning finances and resources as requested. Firms will be provisionally certified and reviewed at the time of yearly recertification.

IV. SPECIFIC CERTIFICATION REQUIREMENTS FOR NONPROFITS

In addition to the criteria outlined in Section III herein, certification as a minority and/or woman controlled NonProfit Organization (NPO) shall be granted by the Supplier Diversity Program to NPOs that fulfill the following criteria:

- A. No NPO shall be certified unless it has filed for and been granted tax exempt status from the Internal Revenue Service of the United States of America under section 501 c(3) or 501 c(4) of the Internal Revenue Code and can produce evidence of such status with its application and from year to year thereafter for its annual recertification.

Exception: The Director, for good cause shown and at the request of an awarding agency may, in his/her discretion allow an organization to temporarily be counted as certified for a particular contract under this section so long as it has filed for tax exempt status under section 501 c(3) or 501 c(4) of the Internal Revenue Code and can produce evidence of this filing along with its application. Under this procedure, an organization shall have its certification denied if its request for tax-exempt status is eventually denied by the Internal Revenue Service. The awarding agency awards a contract(s) to the NPO pending or contingent upon the certification becoming final with the issuance of the required taxexempt status from the Internal Revenue of the United States Treasury Department. Where an NPO has been temporarily certified under this exception,

the Supplier Diversity Program's participation in a contract may be counted towards the awarding agency or authority's goals.

- B. No NPO shall be certified unless it is a corporation duly formed under the laws of Massachusetts, including Chapter 180 and other applicable provisions of the laws of Massachusetts. If an NPO is not a duly formed Massachusetts nonprofit corporation, it must be a duly formed nonprofit corporation under the laws of one of the United States of America or of a foreign country, and be lawfully registered as a foreign nonprofit or charitable corporation in the Commonwealth of Massachusetts.
- C. Where such is required by laws of the Commonwealth of Massachusetts, the NPO must file all necessary documents with the Massachusetts Department of the Attorney General, Division of Public Charities, annually and deliver proof of its compliance with those laws to the Supplier Diversity Program each year as part of the annual recertification process or at such time as shall be mutually convenient for the Supplier Diversity Program and the NPO.
- D. To be considered an NPO, the corporation must not only meet the criteria of these regulations but also fifty-one percent or more of its board of directors/trustees must be minorities or women as so defined.

A non-profit minority or woman controlled organization shall be independent of control or substantial influence by a majority non-profit or profit organization. The minority NPO shall be rebuttably presumed to be dependent on a majority NPO or non-profit firm if (1) it occupies space within the offices of the majority for-profit or non-profit organization, or (2) shares telephone and staff and other resources with a majority NPO and for-profit organization.

In addition to forming a controlling majority of the board, the minority/women members must exercise active control over and participate in financial planning and policy and set and monitor the standards for the day-to-day financial activities of the corporation. This control over financial as well as management affairs must be reflected in the minutes of the corporation's meetings.

- E. An NPO shall not be certified by the Supplier Diversity Program for inclusion on the list of certified non-profit organizations and for-profit organizations until it has sustained itself for at least six months from the date of its incorporation.

Except that, for good cause shown the Director in his/her discretion and at the request of an awarding agency or authority, may reduce this requirement to as little as sixty days so long as there is substantial evidence that the nonprofit organization clearly meets all other criteria set forth in these regulations, subject to any or all waivers in these regulations. The applicant shall be counted, as a certified NPO only for the contract on which it performs, and shall not be included on the Supplier Diversity Program list until it has met the six months requirement.

V. APPLICATION ELIGIBILITY FOR PROFIT AND NON-PROFIT ORGANIZATIONS

The following types of businesses/non-profits are not eligible for MBE or WBE certification:

- A. An MBE or WBE who merely acts as an agent or passive conduit in connection with the provision of services or materials.
- B. An MBE or WBE who does not assume any financial risk and control over goods and services for which the business contracts.
- C. Any MBE or WBE who applies for certification within six (6) months following the transfer of stock in order to achieve at least fifty one Percent (51%) ownership.

VI. APPLICATION PROCESS

Step 1 -- Applicants will submit a completed and signed Minority/Women Business Certification Application, including any other information requested by the Supplier Diversity Program. If the applicant is SDO certified, an SDO Certification Letter should be attached to the completed application, and other information may be excluded from the application at the discretion of the Supplier Diversity Program.

Step 2 -- The Supplier Diversity Program will notify the applicant in writing of any supplemental documentation it needs for certification within 7 business days of receiving a completed and signed application.

Step 3 -- The Supplier Diversity Program must receive the requested supplemental documentation within 10 business days of the date of M/WBE's letter requesting the information. Any applicant pending for at least 15 business days because requested supplemental documentation has not been submitted, shall be rejected and deemed inactive.

Step 4 -- Upon review of the supplemental information, the Supplier Diversity Program may schedule a site visit and/or may request additional documentation.

Step 5 -- The Supplier Diversity Program will make every effort to make a final determination of an applicant's certification status within 30 business days of receipt of all requested documents and will notify the applicant, in writing, within such a time period of its decision or after a site visit, whichever is later.

Step 6 -- If the applicant is denied certification, he or she may file an appeal in writing, to the Supplier Diversity Program within 10 business days of the date of M/WBE's letter denying certification.

Step 7 - Applicants receiving a designation of "Certified MBE and or WBE" will submit a completed Database Input Sheet to the Supplier Diversity Program for publication in the Minority/Women Business Directory compiled by the Certification Unit.

NOTE: Information, forms, or documents which are not completed, signed and submitted by the applicant as required and within the allotted time period will constitute the basis for a denial of certification.

VII. EXPIRATION OF CERTIFICATION, RECERTIFICATION, AND CHANGES IN STATUS OF CERTIFICATION

- A. An applicant that has been denied certification, denied an appeal, or has had a denial sustained following the completion of the appeal process, may reapply for certification no earlier than one year after the date of the Supplier Diversity Program letter denying certification.
- B. The Supplier Diversity Program reserves the right periodically to review the status and/or to update information on all certified businesses/non-profits as it deems appropriate. In order to update and publish the M/WBE Directory, for instance, the Supplier Diversity Program shall request such information each year before or during the month of June. Documentation required to be submitted to the Supplier Diversity Program may include, but is not limited to, a current financial statement, documentation of changes in ownership or control, contracts received in the preceding year, and any other information as deemed appropriate by the Supplier Diversity Program.

This documentation shall be reviewed, and if consistent with these regulations, recertification shall be automatic.

Any company failing to provide the requested information within thirty days of such request will have its certification automatically revoked. A reasonable extension may be given by the Director for good cause show, but it shall not exceed fifteen days, absent highly unusual circumstances.

- C. Any certified non-construction business/non-profit which wishes to become recognized as a certified construction company must apply for certification as a construction company and meet all conditions for certification stated herein.
- D. If a certified business/non-profit wishes to change or add to its original trade listing, the Supplier Diversity Program may require that it be certified as to the changed or added trade listing.
- E. Within thirty days of any change in the information contained in its original application, the firm must notify the Supplier Diversity Program of such change and the Supplier Diversity Program shall, within thirty days, notify the firm of its determination that such change is either a material change which warrants further review, or that the change is not material and no review is warranted and the certification of the firm continues.

VIII. DECERTIFICATION

- A. Any applicant that knowingly provides false information on its application or in support of its renewal application shall have its certification immediately revoked, and shall be prohibited from reapplying for certification by the Supplier Diversity Program for a period of 2 years.
- B. The Supplier Diversity Program may at any time subsequent to the certification of a minority-owned or women owned business/non-profit withdraw the certification if an investigation shows that the business no longer meets the certification criteria of Section III/IV herein,

or

That the business/non-profit has violated the MBE or WBE contract guidelines and/or specifications and/or requirements of the awarding authority resulting in its failure to perform in accordance with all the criteria in Section III/IV, herein,

or

That the business/nonprofit has changed its minority ownership, control, or management without notifying the Supplier Diversity Program within thirty (30) business days of such change as described above in Section VII E.

IX. HEARINGS

- A. The Supplier Diversity Program will hold a hearing regarding a particular application or appeal whenever it deems appropriate. Hearings shall be informal and shall not be subject to the requirements of M.G.L. Chapter 30A. The Director shall conduct the hearing.

B. APPEALS OF DENIED CERTIFICATION

An applicant who has been denied certification may appeal in writing within 10 business days of the date of the Supplier Diversity Program letter of decision. The applicant's request must be submitted in writing and must state the grounds for the appeal. The Director of the Supplier Diversity Program or his/her designee will hold a hearing if so requested. The appellant will be notified of the date, time and place of the hearing. Following the hearing, or if no hearing is requested, the Director will provide a written appellate decision.

C. DECERTIFICATION HEARINGS

The Supplier Diversity Program will review all complaints and determine whether a full investigation will be conducted. Such an investigation will be conducted if an MBE or WBE appears to be out of compliance with the MBE or WBE certification criteria detailed in Section III/IV herein, is not conducting itself as a bona fide minority or woman-owned and controlled business/non-profit.

Upon the completion of an investigation, the Supplier Diversity Program will:

1. Inform the MBE or WBE that the Supplier Diversity Program will hold a decertification hearing, give reasons for the hearing and list the issues to be addressed
2. Inform the MBE or WBE of the time and place of the hearing at least ten (10) business days in advance of the hearing date, and
3. Inform the MBE or WBE that failure to appear at the hearing may constitute a default and will result in the immediate removal of certified status.

Any MBE or WBE that, after receiving a hearing notice, fails to attend the hearing will be considered in default. This will result in the removal of "Certified MBE or WBE" status unless the MBE or WBE can provide a reason acceptable to the Supplier Diversity Program for the failure to appear.

The Supplier Diversity Program, upon decertification of an MBE or WBE, will inform in writing all awarding authorities that the business is no longer certified and is ineligible for participation in special minority business programs as a bona fide minority- or women-owned and controlled firm.

D. APPEALS OF DECERTIFICATION DECISIONS

A business/nonprofit that has been decertified may appeal the decision within ten (10) business days of the date of the Supplier Diversity Program letter of decision. The business' appeal must be in writing and must state all grounds for the appeal. The Director of the Supplier Diversity Program or his/her designee will review the appeal and provide a written appellate decision.

X. MISCELLANEOUS

A. **Prior MBE or WBE Certification by Another Agency:** Prior MBE or WBE certification of the applicant by another city, state, or federal agency shall be considered by the Supplier Diversity Program, but this prior certification shall not, by itself, be conclusive proof that the applicant is eligible for certification by the Supplier Diversity Program.