

TABLE OF CONTENTS

Certification of Disadvantaged Business Enterprises

Statement of purpose 13a-165- 1

Definitions. 13a-165- 2

Disadvantaged business enterprise (DBE) program 13a-165- 3

DBE eligibility criteria 13a-165- 4

Submission of application 13a-165- 5

Application review 13a-165- 6

DBE certification panel. 13a-165- 7

Certification determination 13a-165- 8

Reciprocity 13a-165- 9

Certification period, update and review 13a-165-10

Prequalification update/modification 13a-165-11

Grounds for decertification 13a-165-12

Decertification procedures 13a-165-13

Temporary certification. 13a-165-14

Federal appeal. 13a-165-15

Certification of Disadvantaged Business Enterprises

Sec. 13a-165-1. Statement of purpose

The purpose of sections 13a-165-1 through 13a-165-15 of the Regulations of Connecticut State Agencies is to provide information regarding the substantive criteria and administrative procedures employed by the Department of Transportation in determining whether a person, firm or corporation meets the eligibility requirements for certification as a Disadvantaged Business Enterprise (DBE) under the Department's DBE program. These regulations are intended to implement the disadvantaged business enterprise eligibility requirements of Title 49, Part 23 of the Code of Federal Regulations (i.e., 49 CFR Part 23) as those requirements are made applicable to federally-assisted programs or projects undertaken by the Department as a recipient of Federal funds.

(Effective January 4, 1990)

Sec. 13a-165-2. Definitions

As used in sections 13a-165-1 through 13a-165-15:

(a) "Applicant" means any small business concern which submits an application to the Department of Transportation seeking certification as a DBE pursuant to these regulations;

(b) "Certification" means the determination that an applicant is a DBE, using the criteria set forth in these regulations and in 49 CFR Part 23, and signifies that the applicant is eligible to bid on or to be awarded contract work in accordance with the affirmative action goals established in the Department's DBE program. Certification includes the requirement that the applicant be prequalified and is limited to the specific contract activity(ies) for which the applicant is prequalified;

(c) "Commissioner" means the Commissioner of Transportation, State of Connecticut;

(d) "Controlled" means the power to direct the management and policies of the business and to make the day-to-day as well as major decisions in matters of policy, management and operations. Control shall be real, substantial and continuing, not *pro forma*. It shall be exemplified by possession of the requisite knowledge and expertise to operate the particular business, and goes beyond simple majority, and does not include absentee ownership. Control by a minority or woman will not be deemed to exist if a non-minority owner or employee of the business is disproportionately responsible for the management or operation of the business;

(e) "DBE Certification Panel" means the administrative panel established by the Commissioner of Transportation for the purpose of determining whether a person, firm or corporation meets the eligibility requirements for certification as a Disadvantaged Business Enterprise under these regulations;

(f) "Department" means the Department of Transportation, State of Connecticut;

(g) "Decertification" means the determination that a small business concern, which was certified as a DBE by the Department of Transportation, no longer meets the requirements of a DBE as set forth in these regulations and in 49 CFR Part 23, and therefore is no longer eligible to participate in the DBE program;

(h) "Disadvantaged Business Enterprise" or "DBE" means a small business concern which is owned and controlled by one or more minorities or women who are economically and socially disadvantaged. It also includes a "minority business enterprise," as that term is defined in 49 CFR Part 23;

(i) "Independent business" means a business that is not inextricably associated with another business through common ownership, affiliation, sharing of employees,

facilities, equipment, profits and losses. If there is an “umbilical cord” relationship with a non-disadvantaged business, the business is not an independent business;

(j) “Line of service” means the particular contract activity for which the DBE has been prequalified (e.g., landscaping, bridge painting, paving, etc.);

(k) “Minority” means (1) Black Americans (i.e., all persons having origins in any of the black racial groups of Africa), (2) Hispanic Americans (i.e., all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race), (3) Asian Pacific Americans and Pacific islanders, (4) American Indians and persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through memberships and participation or community identification, (5) Portuguese (i.e., a person of Portuguese, Brazilian or other Portuguese culture or origin, regardless of race), and (6) members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637);

(l) “Office of Contract Compliance” or “OCC” means the administrative unit within the Department of Transportation which has been delegated the responsibility by the Commissioner for the implementation, development and management of the Department’s DBE program, including but not limited to the processing of a DBE application and submittal of a certification recommendation to approve or deny a DBE application;

(m) “Owned” means (1) a sole proprietorship, owned and controlled by a minority or woman or (2) a partnership, joint venture or corporation in which the assets are at least 51 percent owned by one or more minorities or women, or if publicly owned, a business in which at least 51 percent of the stock of which is owned by one or more minorities or women;

(n) “Prequalified” means the determination by the Department of Transportation that an applicant has provided information satisfactory to the Department that the applicant possesses the requisite expertise, equipment, financial resources and ability to perform specific contract activities as a potential contractor or subcontractor on a Department project. Prequalification involves not only an evaluation of the applicant’s ability to perform a particular type of contract activity (e.g., landscaping, printing, etc.) but also the size of that contract activity (e.g., a \$50,000; \$100,000; \$500,000; etc. contract);

(o) “Small Business Concern” means a small business concern as defined pursuant to Section 3 of the Small Business Act, and relevant regulations promulgated pursuant thereto, and pursuant to 49 CFR Part 23. For example, currently a small business concern for purposes of highway and bridge construction cannot have annual average gross receipts in excess of \$14 million over the previous three fiscal years.

(Effective January 4, 1990)

Sec. 13a-165-3. Disadvantaged business enterprise (DBE) program

It is the policy of the Department of Transportation that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts awarded by the Department. In furtherance of this policy, the Department shall take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform contracts, including the establishment of affirmative action goals for its entire contract program, specific projects and individual contracts. Consequently, any small business concern that considers itself to

qualify as a DBE, under the criteria set forth in these regulations and in 49 CFR Part 23, is encouraged to apply to the Department for DBE certification so that it may become eligible to bid on or to be awarded contract work as a DBE.

(Effective January 4, 1990)

Sec. 13a-165-4. DBE eligibility criteria

(a) In determining whether a person, firm or corporation is eligible for certification as a DBE, the Department of Transportation shall use the following criteria:

(1) The applicant must be a small business concern as defined in section 13a-165-2 (o);

(2) The small business concern must be owned and controlled by one or more minorities, as defined in section 13a-165-2 (k), or women, and the minority member(s) or women in question must be economically and socially disadvantaged;

(3) Bona fide minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by that particular minority community. However, the Department is not required to accept this claim if it determines the claim to be invalid;

(4) An eligible disadvantaged business enterprise under these regulations shall be an independent business. The ownership and control by minorities or women shall be real, substantial and continuing, and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. The minority or women 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 form of arrangements. In determining whether a potential DBE is an independent business, the Department shall consider all relevant factors, including the date the business was established, the adequacy of its resources for contract work, and the degree to which financial, equipment leasing and other relationships with non-minority businesses vary from industry practice;

(5) The minority or women owners shall also possess the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy and operations. The business shall not be subject to any formal or informal restrictions, not customary, which limit the discretion of the minority or women owners; and,

(6) The contributions of capital or expertise by the minority or women owners to acquire their interests in the business shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the business or its non-minority owners, or the mere participation as an employee, rather than as a manager.

(b) In addition to the above criteria, the applicant must (1) satisfy the eligibility standards set forth in 49 CFR Part 23 and (2) be prequalified by the Department.

(Effective January 4, 1990)

Sec. 13a-165-5. Submission of application

(a) Any small business concern seeking DBE certification must obtain the necessary application forms from the Department of Transportation, Office of Contract Compliance (OCC). The OCC is available to provide the applicant with information about the DBE program and also to provide assistance in submitting the application.

(b) The applicant must complete the forms and submit all supporting documentation to the OCC for its review. The applicant must also submit supplemental data

or information if requested to do so by the OCC. Failure to promptly submit all requested information shall be grounds for rejecting the applicant's application.

(c) The applicant shall not falsely certify, attest or represent that it is a DBE with knowledge that it does not meet the criteria/definition of a DBE as set forth in sections 13a-165-2 and 13a-165-4 of these regulations and 49 CFR Part 23.

(Effective January 4, 1990)

Sec. 13a-165-6. Application review

(a) The OCC will review the application for completeness and shall evaluate and verify the information submitted in the application, including supplemental data and documentation. The verification process may include personal interviews with the owner(s) or principals in the business and with employees and business associates, and may also include on-site visits.

(b) Within sixty (60) days after receipt of the completed application, the OCC shall make a written recommendation to the Department of Transportation's DBE Certification Panel and shall set forth the reasons for its recommendation as to whether the applicant should or should not be certified.

(c) The OCC shall give written notification to the applicant of its recommendation, the reasons for its recommendation, and the time, date and place when the Certification Panel will meet to consider the application. This notification shall be sent to the applicant by registered or certified mail, postage prepaid, at least ten (10) days prior to the scheduled meeting.

(Effective January 4, 1990)

Sec. 13a-165-7. DBE certification panel

The Commissioner of Transportation has established a DBE Certification Panel (hereinafter referred to as the "Certification Panel" or "Panel") for the purpose of determining whether an applicant is eligible for certification as a DBE using the criteria set forth in these regulations and 49 CFR Part 23. Membership of the Panel consists of a minimum of six (6) persons to be comprised of three (3) representatives of the Department of Transportation and one each from a minority, woman and construction organization or association. A quorum shall consist of one-half of the total membership of the Panel. Panel actions shall be by majority vote of those members present and voting, with each member of the Panel, including the Chairman, having one vote. A tie vote will constitute approval of the action recommended by the OCC.

(Effective January 4, 1990)

Sec. 13a-165-8. Certification determination

(a) Upon receipt of the OCC's recommendation, the Certification Panel shall review the application, supporting data and recommendation.

(b) At the scheduled meeting of the Certification Panel, the OCC shall make a presentation to the Panel and the applicant shall be provided with an opportunity to respond to the OCC's recommendation and to present information and arguments in support of its application. The OCC shall be provided with an opportunity to respond to the information and arguments offered by the applicant. It shall be the responsibility of the applicant to present sufficient verifiable information to the Panel to show that the applicant fully satisfies the eligibility requirements for certification as a DBE.

(c) Following the presentation by the applicant and OCC, the Panel shall notify the applicant of its determination, in writing, within seven (7) days. The Panel's

decision shall be based on the criteria and standards set forth in sections 13a-165-2 (definitions), 13a-165-4 (eligibility criteria), 13a-165-12 (grounds for decertification) and 49 CFR Part 23 (i.e., the federal eligibility standards in effect at the time the certification decision is made).

(Effective January 4, 1990)

Sec. 13a-165-9. Reciprocity

(a) An applicant whose home office is located outside the State of Connecticut must file an application for DBE certification in the same manner as an applicant whose home office is located in Connecticut, except that if the applicant's home office is in any state, district or territory of the United States and the applicant is DBE certified in its home office area then the applicant may be certified as a DBE in Connecticut upon submission, review and verification of the applicant's out-of-state DBE certification documentation.

(b) Notwithstanding the provisions of subsection (a), the applicant shall be required to complete the prequalification portion of the DBE application process. The determination as to the ability of the applicant to perform a particular contract activity shall be made by the Department of Transportation.

(Effective January 4, 1990, amended March 3, 1998)

Sec. 13a-165-10. Certification period, update and review

(a) The DBE certification shall be valid for a period of four (4) years from the date that the Certification Panel makes its determination under section 13a-165-8. Thereafter, at least ninety (90) days prior to the certification expiration date, the DBE must submit a new application to the OCC pursuant to the provisions of sections 13a-165-5 et seq. if the DBE wishes to be recertified as a DBE for another four year period. This new application shall be processed in the same manner as the original application.

(b) Annually, on or about the anniversary of the initial date of certification, the OCC shall mail to the DBE an update report form which shall include an affidavit in which the DBE shall reaffirm the information contained in the original DBE certification application or in its most recently filed update report, if any. The DBE must file the completed update report (e.g., the executed affidavit), together with its most recent Federal Income Tax Return, with the OCC within thirty (30) days of the mailing of the update report form to the DBE. Failure to file a completed update report, or to provide any additional information requested by the OCC, shall be grounds for decertification.

(c) Within thirty (30) days of any change in ownership, control or management of the business, the DBE shall file with the OCC a supplemental application which shall contain the same information required for initial certification as a DBE. As with the initial application, the burden shall be on the business to clearly demonstrate that notwithstanding the change in ownership, control or management, the business fully satisfies the eligibility requirements for certification as a DBE as set forth in these regulations and 49 CFR Part 23. Failure to provide a supplemental application, or to provide information requested by the OCC, shall be grounds for decertification.

(d) The OCC shall review the update report or supplemental application for completeness and verify the information contained therein, and shall thereafter make a written recommendation to the Certification Panel regarding the status of the DBE certification (e.g., does the small business concern still meet the eligibility requirements for designation as a DBE as set forth in section 13a-165-4). The OCC shall give written notification to the DBE of its recommendation, the reasons for

its recommendation, and the time, date and place when the Certification Panel will meet to consider the recommendation. This notification shall be sent to the DBE by registered or certified mail, postage prepaid, at least ten (10) days prior to the scheduled meeting.

(e) Upon receipt of the OCC's recommendation, the Certification Panel shall consider the matter at the scheduled meeting, except that if the OCC recommends decertification then the matter shall be handled in accordance with the provisions of section 13a-165-13.

(f) At the meeting of the Certification Panel, the OCC shall make a presentation to the Panel and the DBE shall be provided with an opportunity to respond to the OCC's recommendation and to present information and arguments in support of its continued certification as a DBE. The OCC shall be provided with an opportunity to respond to the information and arguments offered by the DBE.

(g) Following the presentation by the DBE and the OCC, the Panel shall notify the DBE of its determination, in writing, within seven (7) days.

(Effective January 4, 1990)

Sec. 13a-165-11. Prequalification update/modification

(a) Prequalification update

In addition to the periodic review of DBE status provided for in section 13a-165-10, the OCC shall require that all DBE's (except manufacturers and suppliers) provide a separate update of the prequalification portion of the DBE eligibility requirements.

(1) The OCC shall mail to each DBE a prequalification update form on the twenty-eighth (28th) month following the ending date of the DBE's accounting year-end statement used for prequalification in the original DBE certification application. An update will continue to be required on the same time frame throughout the term of the DBE's certification.

(2) The prequalification update shall contain the financial statements and information of the DBE's most recently completed accounting year.

(b) Prequalification Modification.

(1) Should the DBE, during the intervening twenty-eight (28)-month prequalification period, desire to modify its prequalification line of service(s), it shall make a written request to the OCC. The OCC shall provide the DBE with the necessary forms to enable the OCC to review and evaluate the DBE's request.

(2) The Department, upon receipt, review and evaluation, shall issue a prequalification certificate for a line of service(s) as it deems appropriate.

(Effective January 4, 1990)

Sec. 13a-165-12. Grounds for decertification

A small business concern which has been certified as a DBE by the Department of Transportation may be decertified for good cause shown, including but not limited to the following:

(a) The business no longer meets the eligibility criteria for certification as a DBE as set forth in sections 13a-165-2, 13a-165-4 and/or 49 CFR Part 23;

(b) The business is not able to perform the contract work for which it was prequalified;

(c) The business has failed to provide information requested by the Department regarding any of the eligibility criteria for DBE certification or has provided false information;

(d) The business has failed to submit an update report or a supplemental application as required under section 13a-165-10, or has failed to submit a prequalification update in accordance with section 13a-165-11;

(e) The business has been decertified as a DBE by the Federal Government or another State; or

(f) The business, or any owner of the business, has been convicted or plead guilty under State or Federal law to a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(Effective January 4, 1990)

Sec. 13a-165-13. Decertification procedures

(a) At any time after a business has been certified as a DBE, the OCC may initiate a proceeding to decertify the DBE if the OCC has reasonable cause to believe that the DBE does not meet the requirements of a DBE as set forth in these regulations and in 49 CFR Part 23, or for other good cause. Following investigation, the OCC shall refer the matter to the Certification Panel for a decertification hearing.

(b) If the matter is referred to the Certification Panel for hearing, the DBE shall be provided with written notice including: (1) a statement of the time, place and nature of the hearing, (2) a statement of the legal authority and jurisdiction under which the hearing is to be held, (3) a reference to the particular sections of the statutes and regulations involved, and (4) a short and plain statement of the facts or conduct warranting decertification.

(c) At the hearing before the Certification Panel, any oral or documentary evidence may be received, but the Panel shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. When the hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(1) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare any copies or excerpts with the original.

(2) The parties may conduct cross-examinations required for a full and true disclosure of the facts.

(3) Notice may be taken of generally recognized technical facts within the Department of Transportation's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed.

(4) The Certification Panel's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

(d) The Certification Panel shall render a decision in the matter within sixty (60) days following the close of evidence. The decision shall be in writing and shall contain the Panel's findings of fact and conclusions of law. A copy of the decision shall be sent to all parties by registered or certified mail, postage prepaid.

(Effective January 4, 1990)

Sec. 13a-165-14. Temporary certification

The Director of the Office of Contract Compliance may issue a temporary DBE certification to a small business concern whenever the Director determines that such temporary certification is necessary or in the best interest of the State because of a situation which demands immediate attention to ensure the safety of the travelling

public or because of the immediate press of construction schedules. A temporary certification shall be for a period not to exceed sixty (60) days and shall not be subject to extension or renewal. Rather, the small business concern must seek and obtain certification pursuant to sections 13a-165-5 through 13a-165-8 of these regulations.

(Effective January 4, 1990)

Sec. 13a-165-15. Federal appeal

Any person, firm or corporation which believes that it has been wrongly denied certification as a DBE by the Department, or has been wrongly decertified, may file an appeal with the United States Department of Transportation in accordance with the procedures set forth in 49 CFR Part 23. The filing of such an appeal shall not automatically stay enforcement of the decision at issue. Rather, the person must seek a stay from the Commissioner or the United States Department of Transportation.

(Effective January 4, 1990)