

220-RICR-80-15-1

## **TITLE 220 – DEPARTMENT OF ADMINISTRATION**

### **CHAPTER 80 – DIVERSITY, EQUITY AND OPPORTUNITY**

#### **SUBCHAPTER 15 – VETERAN BUSINESS ENTERPRISE**

PART 1 – Certification and Decertification of Veteran Business Enterprises by the State of Rhode Island and Participation by Veteran Business Enterprises in State Purchases of Goods and Services and Public Works Projects

#### **1.1 Authority**

The Regulations published herein have been approved and established by the Director of Administration pursuant to R.I. Gen. Laws §§ 37-14.3-4 and 37-14.3-5. To qualify as a Veteran Business Enterprise (VBE), a firm must meet eligibility standards established in § 1.5 of this Part.

#### **1.2 Purpose**

- A. To support the fullest possible participation of Veteran Business Enterprises (VBEs) in State public works projects and in State purchases of goods and services.
- B. To develop rules and regulations governing the certification and decertification of Veteran Business Enterprises (VBEs) to participate in State public works projects and in State purchases of goods and services.

#### **1.3 Definitions**

- A. The following words and terms shall have the following meanings whenever used in these Regulations.
  - 1. “Aggregate utilization rate” means the overall percentage goal of the State’s total dollar value of procurement contracts and public works projects being made directly or indirectly to VBEs.
  - 2. “Annual update” means the information required from a certified firm prior to its anniversary date. Materials to be furnished may include, but not necessarily be limited to, most recently filed personal and business tax returns, year-end financial statements, personal financial statements, and a no change affidavit.

3. "Applicant" means any business that applies to the Department of Administration (DOA) for certification, decertification, reconsideration, or appeal.
4. "Assistant administrator – MBE" means the head of the MBECO.
5. "Associate director of ODEO" means the head of the ODEO as established by R.I. Gen. Laws § 42-11-2.7(b).
6. "Awarding authority" means any agency or department of the federal government, the State of Rhode Island or their political subdivisions that award contracts using public funds.
7. "Bidder" means any individual, organization, corporation, partnership, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted that is submitting a quote or bid in response to a solicitation issued by the Division of Purchases or any other State Agency.
8. "Caseworker" and/or "Representative of DOA" means a DOA staff member, or its designee, assigned to review applications.
9. "Certification" means that a company has met the burden of demonstrating by the preponderance of evidence, that it meets the requirements of these regulations and federal regulations concerning veteran status, individual disadvantage, business size, ownership and control.
10. "Certification period" means the length of time a firm may be certified prior to having to undergo another full review of its eligibility and qualifications for certification.
11. "Certification review committee" means the committee that shall function as an appellant body. Firms that are denied certification as a VBE may request a hearing before the CRC in order to appeal said decision. The CRC consists of the five (5) members of the MBE Certification Review Committee (CRC) as appointed by the Director of the Department of Administration and as defined in Subchapter 10 [Part 1](#) of this Chapter. No person involved in the original determination shall serve as a member of the CRC during an appeal.
12. "Certified" means an applicant firm which has been reviewed by DOA and found to have met the certification requirements provided in these regulations.

13. "Construction" means construction, alteration, or repair (including dredging, excavating and painting) of buildings, structures, or other real property.
14. "Days" means business days, not calendar days.
15. "Director" means the Director of the Department of Administration. The Director may delegate his or her duties under these Regulations to a designee provided that the issuance of any waivers from or amendments to these Regulations must be approved in writing by the Director.
16. "Division" means the Department of Administration's Division of Purchases. If the solicitation is not issued by the Division of Purchases, then Division shall mean the division or department within the State Agency that is issuing the solicitation.
17. "DOA" means the Rhode Island Department of Administration.
18. "Economically disadvantaged" means that the veteran's personal net worth is not in excess of the economic disadvantage criteria as established by 49 C.F.R. Part 26.
19. "Hearings" means formal meetings held at the request of the applicant and conducted pursuant to the Administrative Procedures Act. Hearings are conducted by the CRC and relate to the denial determination of an applicant or decertification of a certified firm.
20. "MBECO" means the Minority Business Enterprise Compliance Office within the ODEO.
21. "ODEO" means the Office of Diversity, Equity and Opportunity that has been established as a division with the Department of Administration pursuant to R.I. Gen. Laws § 42-11-2.7.
22. "On-going concern" means a business whose activity is consistent and perpetual and whose business hours are regular.
23. "Proposer" means any individual, organization, corporation, partnership, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted that is submitting a proposal in response to a solicitation issued by the Division of Purchases or any other State agency.
24. "Regular dealer/supplier" means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or

supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products needs not keep such products in stock, if it owns or operates distribution equipment.

25. "Regulations" means all of the provisions contained in this document or regulations established by other awarding or certifying federal authorities, including, but not necessarily limited to, 49 C.F.R. Part 26, 13 C.F.R. Part 121, and 13 C.F.R. Part 124.
26. "Request for proposals" or "RFP" means a solicitation for competitive offers where lowest price is not the sole or primary consideration to be used in determining an award or any other solicitation that is identified and classified by the Division as a request for proposals.
27. "Request for quotes" or "RFQ" means a solicitation for competitive offers where lowest price is the sole or primary consideration to be used in determining an award or any other solicitation that is identified and classified by the Division as a request for quotes.
28. "Service" means a contract or firm whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.
29. "Site visit" means a visit by a DOA staff member, or its designee, to an applicant's business facility or job location.
30. "Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operations in which it is bidding on state government contracts, and qualified as a small business under the criteria and size standards in 13 C.F.R. Part 121.
31. "State" means the state of Rhode Island and any of its departments or agencies and public agencies.
32. "State agency" includes any state department, board, bureau, agency, or public agency as defined by R.I. Gen. Laws § 37-2-7(16).
33. "Substantial" means considerable in importance, value, degree, size, amount, extent or worth concerning the essential or substance of something.

34. "Substantial investment" means the contribution of capital or expertise as defined in 49 C.F.R. § 26.69(c) through 49 C.F.R. § 26.69(i).
35. "Using agency" means any state government entity which utilizes any supplies, services, or construction purchased under R.I. Gen. Laws Chapter 37-2.
36. "VBE compliance plan" is a Bidder's plan to achieve the Aggregate Utilization Rate in connection with a State procurement contract or public works project.
37. "VBE participation rate" means the ratio of the amount of work performed in connection with a State procurement contract or public works project by VBEs to the amount of work performed by all contractors and subcontractors.
38. "Veteran" means a person who served on active duty with the U.S. Army, Air Force, Navy, Marine Corps or Coast Guard, for a minimum of one hundred eighty (180) days and who was discharged or released under conditions other than dishonorable. Reservists or members of the National Guard called to federal active duty (for other than training) or disabled from a disease or injury incurred or aggravated in the line of duty or while in training status also qualify as a veteran pursuant to 38 C.F.R. Part 74.
39. "Veteran business enterprise" or "VBE" means a small business enterprise that is owned and controlled by one or more individuals who are veterans as defined by R.I. Gen. Laws § 37-14.3-3(7) and who are economically disadvantaged as defined by R.I. Gen. Laws § 3-14.3-3(4). To be recognized under these Regulations as a VBE, the business must be certified as a VBE by the ODEO.
  - a. Which may include a business owned by a surviving spouse or permanent caregiver of a veteran as provided by 38 C.F.R. Part 74.

## **1.4 Incorporated Materials**

This certifying authority is not limited to basing certification or decertification solely on the criteria outlined in these rules and regulations, but may consider regulations established by other awarding and/or certifying authorities, including, but not necessarily limited to, 49 C.F.R. Part 26 (October 2014), 13 C.F.R. Part 121 (December 2019) and 13 C.F.R. Part 124 (October 2016), incorporated herein, not including later amendments or editions thereof.

## 1.5 Certification Criteria

A. DOA will certify or recertify only those firms which meet all of the requirements as outlined below:

1. Be a small business concern as defined pursuant to the U.S. Small Business Administration criteria and size standards in 13 C.F.R. Part 121.
2. Owner(s) must be a veteran found to be economically disadvantaged, in accordance with 49 C.F.R. Part 26.
3. Veteran owners/partners/shareholders must own at least fifty-one percent (51%) of the business.
4. Veteran owners must possess control of the business and the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on management, policy and operations.
5. Veteran owners must be substantial investors in the business.
6. The business must be an on-going concern.
7. The business must be in operation a minimum of six (6) months prior to applying for certification.
8. Existing businesses whose ownership and control have been transferred to veterans must be in the control of the veterans a minimum of six (6) months prior to applying for certification.

B. Ownership Requirements

1. An applicant must satisfy either of §§ 1.5(B)(1)(a) and (b) or (c) of this Part, as well as §§ 1.5(B)(1)(d) through (f) of this Part, below, in order to be considered fifty-one percent (51%) owned by veterans:
  - a. In a corporate form of organization, the veteran shareholders 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
  - b. In a partnership form of organization, the veteran partners must own at least fifty-one percent (51%) of the partnership; or
  - c. In any other form of organization, the veteran owners must own at least fifty-one percent (51%) of the business interest or 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

- d. The veteran owners 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
- e. The veteran owners must substantially share in all the risks assumed by the business firm; and
- f. 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%) veteran ownership of the business firm.

### C. Control Requirements

- 1. To prove that the veteran owners possess control over the business, an applicant must satisfy all of the requirements of §§ 1.5(C)(1)(a) through (e) of this Part, below:
  - a. The veteran owners must demonstrate that they have control over the day-to-day management of the business and the policy making mechanism of the business.
  - b. The ownership and control by the veteran owners must be real, substantial, and continuing and shall go beyond the *pro forma* ownership of the firm as reflected in the ownership document.
  - c. The veteran owners 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 operations of the business.
    - (2) Have the authority to hire and fire employees, including those to whom management authority is delegated.

- (3) Be an authorized signer 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 VBE.
  - (6) Have displayed independence and initiative in seeking and negotiating contracts, accepting and rejecting bids, and in conducting all major aspects of the business.
- d. Any of the following conditions creates an irrefutable presumption that the veteran owners do not have control of the business that is applying for certification:
- (1) If the veteran owners are currently employees of a non-veteran owned business corporation, or individual, or partnership which has significant ownership interest in the business firm applying for certification.
  - (2) If the directors and/or management of the applicant firm is substantially the same as the affiliated non-veteran owned firm.
  - (3) If the applicant is a wholly-owned subsidiary of a non-veteran owned firm.
  - (4) If the applicant firm has an extremely dependent relationship on a non-veteran owned firm or individual.
- e. Any agreement, option, right of conversion, scheme or other restraint, which, if exercised, would result in less than dominant control by the veteran owners is prohibited.

#### D. Substantial Investment in Business Requirements

1. The veteran owners 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:
  - a. A substantial amount of money invested in the business, or



- b. Investment in the form of capital, equipment, contribution of property, space, patents, and copyrights.
  - 2. 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.
  - 3. There will be an irrefutable presumption that the veteran owners 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-veteran corporation, partnership, or individual that has a significant interest in the applicant.
- E. Continuing Operational Requirement
- 1. The applicant must be an ongoing business concern. It must demonstrate to the satisfaction of DOA that it was not established solely for the purpose of competing for the VBE program.

## **1.6 Applications**

Applicants must complete the application supplied by DOA, supply all of the information requested therein, agree to supply any additional information requested by DOA, and agree to be bound by all the provisions and regulations governing the certification and recertification process as detailed by these regulations.

## **1.7 Intake and Evaluation Procedures**

- A. The caseworker and/or representative of DOA will review each application to determine if the applicant has submitted a complete application.
- B. If the applicant has failed to submit all requested information, the applicant will be notified via mail or by email at the address furnished by the applicant by the caseworker and/or representative of DOA detailing what required information is missing from their application.
- C. Any application for which all requested information is not received within a thirty (30) calendar day period from the date of the notification will either be withdrawn, and the applicant cannot reapply earlier than sixty (60) days from the expiration of the thirty (30) day period, or the application may be denied.
- D. The caseworker and/or representative of DOA will evaluate the completed application and may conduct a site visit and complete a site visit report if it felt

that further investigation of the applicant firm is warranted to determine whether the applicant meets the requirements for certification as a VBE. This evaluation will be completed within a reasonable time after receipt of the completed application, which shall not exceed ninety (90) days.

1. While the office is awaiting additional information from the applicant, the ninety (90) day period for processing an application is suspended until all additional information requested from the applicant has been received.
- E. DOA may, in its discretion, grant or request an interview with the applicant firm, if it feels an interview is essential to complete the application review process.
- F. After review and verification of each application a case evaluation and/or site visit report will form the basis of the report prepared by the caseworker and/or representative of DOA to the Assistant Administrator – MBE within the ODEO.
- G. No requests for withdrawal of an application will be considered once the report has been prepared by the caseworker and/or representative of DOA for the Assistant Administrator – MBE.
- H The Assistant Administrator – MBE and the Associate Director of ODEO will meet to review the application and reports of the caseworker and/or representative of DOA to determine the certification of the applicant.
1. If the Assistant Administrator – MBE and the Associate Director of ODEO, jointly, determine that an applicant meets the criteria for certification as a VBE pursuant to these regulations, DOA shall certify the applicant.
  2. If the Assistant Administrator – MBE and the Associate Director of ODEO, jointly, determine that an applicant firm does not meet the criteria for certification as a VBE pursuant to these regulations, DOA shall notify the applicant firm by certified mail of the denial determination.
    - a. The denial determination shall include the basis for the denial including a reference to the specific sections of these rules that the applicant has failed to comply with.
    - b. The applicant will also be notified that the applicant has the right to request an appeal hearing before the Certification Review Committee (CRC).
    - c. If certification is denied the applicant may reapply no earlier than one year after the date of the decision of the DOA.

## 1.8 Appeal Procedures

- A. Appeal hearings before the CRC shall be conducted pursuant to R.I. Gen. Laws §§ 42-35-9 through 42-35-16.
- B. Applicant firms seeking an appeal hearing before the CRC must notify DOA in writing of its intention to appeal within ten (10) days of the receipt of the denial determination.
- C. At hearing, the CRC will consider evidence and matters officially noticed.
- 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. Where such decorum is not observed, the Chairperson of the CRC or his or her designee will have the authority to take appropriate action, including ejectment or adjournment, if necessary.
- E. Stipulations
  - 1. Both the CRC and the applicant may enter written stipulations if they are signed by the parties sought to be bound thereby.
  - 2. Oral stipulation may be made on the record, at the discretion of the Chairperson, during the course of the hearing.
- F. The Hearing Record
  - 1. The Chairperson shall direct that a recording be made by electronic recording equipment of each proceeding. At the request of an applicant, the Chairperson shall allow a stenographer to record the proceedings, provided, however, that copies of the hearing transcript must be provided to the CRC and the MBECO at no cost within thirty (30) days of the conclusion of the hearing.
  - 2. If any party chooses to appeal a final CRC decision to Superior Court or to appeal a decision otherwise provided by law and the Superior Court (or another Court) requires a transcript of the hearing and there is only an electronic recording of the hearing, the party seeking appeal shall be responsible for having the transcript prepared by an independent person or company at the Applicant's expense within twenty (20) days of filing the appeal.

- G. After the CRC has conducted its hearing it shall notify the applicant by certified mail, in writing of its decision, which shall include findings of fact and conclusions of law.

## **1.9 Decertification**

DOA may, at any time after it has certified a VBE, withdraw certification if the status of that firm's ownership, control, or management make such action necessary, or it fails to maintain its status as an ongoing business, or it has violated the guidelines of an awarding authority or no longer qualifies as a small business concern. A firm may be certified by the DOA after being provided with an opportunity to be heard by the MBECO. Firms decertified by the DOA may seek an appeal of the decertification determination before the CRC.

## **1.10 Grounds for Complaint**

- A. Any person, including a DOA staff member or representative of an awarding authority, can, in writing, make a complaint to DOA against any VBE if that person believes that the VBE is abusing its certified status or failing to conduct itself as a bona fide VBE. DOA reserves the right to investigate any and all complaints.
- B. If, after its investigation, DOA finds that a VBE has:
1. Submitted inaccurate or false information to DOA during the certification or recertification process; or
  2. Has violated the guidelines of an awarding authority; or
  3. Has changed its ownership, control, or management without notifying DOA within thirty (30) days of such change; or
  4. Has failed to conduct itself as a bona fide VBE or to maintain its status as an ongoing concern, it may seek an information resolution to the problem, hold a hearing, or immediately decertify the VBE.

## **1.11 Informal Resolution**

- A. If DOA chooses to seek an informal resolution to the problem, it will:
1. Advise the enterprise of the allegations made against it, and
  2. Inform the enterprise of the findings of the representative who investigated its case, and

3. Request that the VBE take voluntary action to correct the problem within thirty (30) days of the notification.
- B. When DOA in its judgement concludes that a VBE has failed to take corrective action within thirty (30) days of notification, it will issue a decertification determination. Firms decertified by the DOA may seek an appeal of the decertification determination before the CRC.

## **1.12 Annual Update**

- A. All certified firms shall update their business information on an annual basis. Failure to furnish requested information may result in loss of certification, after being provided with the opportunity to be heard by the MBECO.
- B. DOA shall issue a Notice of Pending Expiration of Certification or Notice of Annual Update Request to each VBE approximately sixty (60) days before the expiration of the certification period or the annual update anniversary date. However, failure of DOA to issue the notice or failure of the certified VBE firm to receive the notice shall not extend the existing certification period nor relieve the VBE of the obligation to submit a timely application for recertification or annual update in accordance with this section.
- C. The application for Renewal of Certification or Annual Update shall be submitted to DOA not less than thirty (30) days before the date of expiration of the existing certification or the annual update anniversary date.
- D. Applications for recertification and annual updates shall meet all of the requirements for application for certification set forth in these regulations with all information and documents updated to the date of the application for renewal or annual update anniversary date.
- E. Failure of a certified firm to recertify or provide annual update submittals in a timely manner will result in the firm not being recertified by DOA. A firm that fails to provide all information required for recertification must submit a new certification application with all accompanying documents and this application will be processed as prescribed in these regulations.

## **1.13 Effect of Prior VBE Certification by Another State or Federal Agency**

Prior VBE certification of the applicant by another state or federal agency or a Unified Certification Program shall be considered by the DOA, but in no case shall this prior certification be considered conclusive proof that the applicant is eligible for certification. To the extent feasible, DOA will confer with prior

certifying agencies, but in no case shall prior certification be considered grounds for reciprocity.

## **1.14 Judicial Review**

An applicant may seek judicial review of any final administrative decision of the DOA and/or the CRC in accordance with R.I. Gen. Laws Chapter 42-35.

## **1.15 Compliance with Regulations Governing Participation in State Purchases and Public Works Projects**

### **A. Scope**

1. State Agencies as defined herein shall comply with these regulations; provided, however, that pursuant to R.I. Gen. Laws §§ 37-14.3-6 and 37-14.3-7 the Director of the Department of Transportation has received delegated authority to adopt regulations consistent with R.I. Gen. Laws Chapter 37-14.3 thereby exempting the Department of Transportation from the requirements of these Regulations.

### **B. Waivers**

1. The Director of Administration may waive strict application of these Regulations when it has been determined in writing that the Proposer or Bidder must satisfy requirements of federal law which achieve the goals and purpose of these Regulations. The Director must provide written notice of any waiver to the ODEO. All such notices shall be available for public inspection.

### **C. Requests for Proposals and Requests for Quotes**

1. This section applies whenever the Division or a State Agency seeks to procure goods, services, and/or public works projects through the issuance of an RFP or RFQ.
2. Aggregate Utilization Rate
  - a. The Aggregate Utilization Rate is three percent (3%) provided that, in the event the percentage set forth by R.I. Gen. Laws § 37-14.3-4 is amended, the Aggregate Utilization Rate herein shall also be amended so that it always reflects the percentage set forth by R.I. Gen. Laws § 37-14.3-4.
3. State Agency Responsibilities

a. VBE Coordinator

- (1) For each RFP or RFQ issued, the Using Agency shall designate a VBE Coordinator no later than the time the RFP or RFQ is issued. For each RFP or RFQ assigned to him or her, the VBE Coordinator shall be responsible for compliance oversight and tracking and recordkeeping all data and information that is required to be reported by each State Agency under § 1.15(F)(1) of this Part.

b. Agency Procedures

- (1) Each State Agency shall attempt to achieve the Aggregate Utilization Rate by applying one of the two methods as described below in § 1.15(C)(3)(c) of this Part (Prime Contractor Method) and § 1.15(C)(3)(d) of this Part (No Prime Contractors).

c. Prime Contractor Method

- (1) For each procurement where Bidders will be serving as a prime contractor, the Using Agency shall ensure that it tries to achieve, at a minimum, the Aggregate Utilization Rate. The Using Agency shall ensure that the Bidder either meets or exceeds this requirement or has been granted a good faith waiver.

d. No Prime Contractors

- (1) In lieu of using the prime contractor method described above in § 1.15(C)(3)(c) of this Part, the Using Agency may meet the Aggregate Utilization Rate by ensuring that the rate is met in the aggregate for each fiscal year. VBEs may be solicited directly to accomplish this requirement.

4. Bidder Responsibilities

a. Acknowledgement

- (1) A Bidder shall include with its bid or quote, a statement acknowledging the provisions of R.I. Gen. Laws Chapter 37-14.3 and its obligation to meet the Aggregate Utilization Rate. Satisfying this requirement means that a minimum of the Aggregate Utilization Rate of the total dollar value of work to be performed in relation to the procurement will be

performed by certified VBEs. If a Bidder is a VBE, it may satisfy this requirement by performing a minimum of the Aggregate Utilization Rate of the total dollar value of work itself.

b. Submission of VBE Compliance Plan

- (1) Bidders must submit a VBE Compliance Plan to the Division. The VBE Compliance Plan shall identify each VBE name, each subcontract dollar amount and type, and each subcontract that the Bidder projects will be awarded to VBEs over the period of the project. Unless otherwise indicated in the solicitation, the Bidder must submit this VBE Compliance Plan within five (5) business days of receipt of a tentative award issued by the Division.

c. VBE Liaison Officer

- (1) The chief executive officer of each Bidder shall designate a VBE liaison officer who shall be responsible for coordinating with the ODEO, Division and the Using Agency throughout the life of the contract.

5. Approval or Disapproval of VBE Plan

a. Review

- (1) The MBECO shall review VBE Compliance Plans. Any VBE Compliance Plan that reasonably ensures compliance with the Aggregate Utilization Rate requirement shall be approved.

b. Impossibility of Compliance

- (1) Where the Bidder has proved that for reasons beyond its control, compliance with the Aggregate Utilization Rate requirements is impossible, the MBECO may approve a VBE Compliance Plan that ensures compliance with a VBE utilization rate of less than the Aggregate Utilization Rate. To prove impossibility of compliance, the Bidder must demonstrate that it is making all appropriate good faith efforts as listed in § 1.15(C)(6)(d) of this Part to increase VBE participation to the Aggregate Utilization Rate level. The Bidder must also demonstrate that, despite the Bidder's efforts, the Bidder's VBE Compliance Plan represents a



reasonable exception to the Aggregate Utilization Rate due to valid reasons such as the lack of availability and/or willingness of qualified VBEs to work on the contract.

c. Revised Plan

- (1) If the MBECO does not approve the VBE Compliance Plan that the Bidder has initially submitted, the Bidder, after consulting with the MBECO, shall present a revised plan to the MBECO for review.

d. Reconsideration

- (1) Within five (5) business days of having its VBE Compliance Plan denied by the MBECO, the Bidder may appeal to the Associate Director of ODEO for reconsideration. All appeals must be in writing and addressed to the Associate Director of ODEO, One Capitol Hill, 3rd Floor, Providence, RI 02908. A written reconsideration decision will be issued by the Associate Director of ODEO within thirty (30) business days of receipt provided that the Associate Director of ODEO may extend such time upon good cause.

e. Failure to Have an Approved Plan

- (1) A Bidder's failure to have an approved VBE Compliance Plan constitutes non-compliance with the provisions of R.I. Gen. Laws Chapter 37-14.3.

6. Continuing Disclosure

a. On-Site Inspections

- (1) The Division, ODEO and the Using Agency's VBE Coordinator are permitted to periodically conduct on-site inspections to determine compliance with the provisions of R.I. Gen. Laws Chapter 37-14.1 and § 1.15(C)(2)(a) of this Part. The Division, ODEO, or the Using Agency's VBE Coordinator may require a Bidder to furnish copies of purchase orders, subcontracts, cancelled checks, and other records needed to substantiate a Bidder's compliance with its approved VBE Compliance Plan.

b. Change Orders

(1) If during the life of the contract or project, a change order is issued by the Division, the Proposer shall notify the ODEO of the change as soon as reasonably possible. Proposers must submit to the ODEO a revised VBE Compliance Plan consistent with achieving the Aggregate Utilization Rate on any change order amounts.

c. Notice of Failure

(1) If a Bidder fails to meet the requirements outlined in its approved VBE Compliance Plan, it shall explain to the Division, in writing, why the requirements could not be met and why meeting the requirement was beyond the Bidder's control.

d. Good Faith Waivers

(1) The Division, in consultation with the ODEO, may issue a good faith waiver which shall exempt the Bidder from meeting its VBE requirements. To determine whether a Bidder has a good faith reason for failing to meet its requirements, the Division may consider among other factors:

(AA) Whether the Bidder attended any pre-solicitation or pre-bid meetings that were scheduled by the Division to inform VBEs of contracting or subcontracting opportunities;

(BB) Whether the Bidder advertised in general circulation, trade association, and veteran focused media concerning the subcontracting opportunities;

(CC) Whether the Bidder provided written notice to a reasonable number of specific VBEs that their interest in a contract was being solicited, in sufficient time to allow VBEs to participate;

(DD) Whether the Bidder followed up with VBEs that showed an initial interest by contacting the firms to determine whether they were interested;

(EE) Whether the Bidder selected portions of work to be performed by VBEs in order to increase the likelihood of meeting VBE participation requirements (including,

where appropriate, breaking down contracts into economically feasible units to facilitate VBE participation”;

- (FF) Whether the Bidder provided interested VBEs with adequate information about the plans, specifications and requirements of the contract;
- (GG) Whether the Bidder negotiated in good faith with interested VBEs;
- (HH) Whether the Bidder made suggestions to interested VBEs to assist them in obtaining bonding, lines of credit, or insurance required by the Bidder;
- (II) Whether the Bidder effectively used the services of available veteran community organizations, veteran contactors' groups, local, state and federal veteran business assistance offices; and other organizations that provide assistance in the recruitment and placement of VBEs.

e. Remedial Action

- (1) If the Bidder does not make such an explanation, or if the Division determines that the Bidder's explanation does not justify its failure to meet the requirements in its approved VBE Compliance Plan, the Division may direct the Bidder to take appropriate remedial action. Failure to take remedial action directed by the Division constitutes non-compliance with the provisions of R.I. Gen. Laws Chapter 37-14.3 and the Bidder shall be subject to the sanctions as prescribed in R.I. Gen. Laws § 37-14.3-6.

7. Concurrent Compliance with Federal Law

- a. The Aggregate Utilization Rate requirement set forth in § 1.15(C)(2) (a) of this Part can be satisfied concurrently with similar requirements mandated under federal law.

D. Standard Forms

- 1. The ODEO is authorized to develop, adopt, and publish uniform documents and standard forms as the ODEO deems appropriate to ensure consistency in effectuating these Regulations.

E. RFP/RFQ Language

1. All solicitations covered by these Regulations should include language that references R.I. Gen. Laws Chapter 37-14.3 and R.I. Gen. Laws Chapter 37-2.2.

F. Recordkeeping

1. State Agencies shall keep records relating to the utilization of VBEs for each of their solicitations and resulting contracts. The records shall include, at a minimum, the name of the Proposer or Bidder that is awarded the contract, the name of each VBE that subcontracts with the Proposer or Bidder, the dollar value that corresponds with each subcontract, the Proposer's proposed VBE Participation Rate, the Bidder's proposed VBE utilization rate as indicated in the Bidder's approved VBE Compliance Plan, the Proposer's actual VBE Participation Rate, and the Bidder's actual VBE utilization rate. State agencies shall complete and submit all standard forms adopted pursuant to § 1.15(D)(1) of this Part and shall report such information to the ODEO on an annual basis or as requested by the ODEO.

## **1.16 Amendments**

The Regulations may be rescinded or amended from time to time with the approval of the Director. Any amendments must be promulgated by the Department of Administration on behalf of the Director in accordance with the "Administrative Procedures Act", R.I. Gen. Laws Chapter 42-35.

## **1.17 Severability**

The provisions of this document are severable, and if any of the provisions shall be held to be unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

220-RICR-80-15-1

**TITLE 220 - DEPARTMENT OF ADMINISTRATION**

**CHAPTER 80 - DIVERSITY, EQUITY AND OPPORTUNITY**

**SUBCHAPTER 15 - VETERAN BUSINESS ENTERPRISE**

PART 1 - CERTIFICATION AND DECERTIFICATION OF VETERAN BUSINESS ENTERPRISES BY THE STATE OF RHODE ISLAND AND PARTICIPATION BY VETERAN BUSINESS ENTERPRISES IN STATE PURCHASES OF GOODS AND SERVICES AND PUBLIC WORKS PROJECTS

Type of Filing: Amendment

**Agency Signature**

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Agency Head Signature

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Agency Signing Date

**Department of State**

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Regulation Effective Date

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Department of State Initials

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Department of State Date