

Rules of Department of Highways and Transportation

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

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**Title 7—DEPARTMENT OF
HIGHWAYS AND
TRANSPORTATION**

**Division 10—Missouri Highways and
Transportation Commission
Chapter 8—Disadvantaged Business
Enterprise Program**

7 CSR 10-8.010 General Information

PURPOSE: This rule provides for implementation of Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 and Title 49 Code of Federal Regulations part 23.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 requires that certain federal highway funds appropriated to the state of Missouri must be spent with small business concerns owned and controlled by socially and economically disadvantaged individuals. The United States secretary of transportation has established minimum uniform criteria to be used by state governments in certifying these small business concerns, which criteria are published in the *Code of Federal Regulations* at 49 CFR part 23.

(2) The Missouri Highways and Transportation Commission controls and acts by and through the Missouri Highways and Transportation Department which is directed by the chief engineer. The administration of the Disadvantaged Business Enterprise Program within the Missouri Highways and Transportation Department has been delegated to the construction division engineer. Certification applications and other information may be obtained from the equal employment opportunity administrator in person, by writing or by telephoning the Missouri Highways and Transportation Department, Construction Division, Equal Employment Opportunity Administrator, Capitol Avenue and Jefferson Street, P.O. Box 270, Jefferson City, MO 65102, telephone (573) 751-2859.

(3) Small business concern has the meaning of that term under section 3 of the Small

Business Act (15 U.S.C. 632); except that this term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual(s) which has average annual gross receipts over the preceding three (3) fiscal years in excess of fifteen (15) million three hundred seventy thousand dollars (\$15,370,000) as adjusted by the secretary of the United States Department of Transportation.

(4) Socially and economically disadvantaged individuals has the meaning of that term under Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations, except that women shall be presumed to be socially and economically disadvantaged individuals.

(5) The following standards shall be used by the department in determining whether a firm is owned and controlled by one (1) or more minorities or women and shall therefore be eligible to be certified as a disadvantaged business enterprise.

(A) Bona fide minority group membership shall be established on the basis of the individual's claim that s/he 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.

(B) An eligible disadvantaged business enterprise 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 firm 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. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a disadvantaged business enterprise. In determining whether a potential disadvantaged business enterprise is an independent business, the department shall consider all relevant factors, including the date the business was established, the adequacy of its resources for the work of the contract and the degree to which financial, equipment leasing and other relationships with nonminority firms vary from industry to practice.

(C) The minority or women owners also shall possess 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 matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the minority or women owners. There shall be no restrictions through, for example, bylaw provisions, partnership agreements or charter requirements for cumulative voting rights or otherwise that prevent the minority or women owners, without the cooperation or vote of any owner who is not a minority or woman, from making a decision.

(D) If the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm, then the firm is not controlled by minorities or women and shall not be considered a disadvantaged business enterprise. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can be considered as controlling the business.

(E) All securities which constitute ownership, control of a corporation, or both, for purposes of establishing it as a disadvantaged business enterprise, shall be held directly by the minorities or women. No securities held in trust, or by any guardian for a minor, shall be considered as held by a minority or woman in determining the ownership or control of a corporation.

(F) The contributions of capital or expertise by the minority or women owners to acquire their interests in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not socially and economically disadvantaged, or the mere participation as an employee, rather than as a manager.

(G) In addition to the mentioned standards, the department shall give special consideration to the following circumstances in determining eligibility:

1. Newly formed firms and firms whose ownership, control, or both, has changed since the date of the advertisement of the contract are closely scrutinized to determine the reason for the timing of the formation of or change in the firm;

2. A previous, continuing, or both, employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities discussed in this section; and

3. Any relationship between a disadvantaged business enterprise and a business which is not a disadvantaged business enterprise which has an interest in the disadvantaged business enterprise is carefully

reviewed to determine if the interest of the disadvantaged business enterprise conflicts with the ownership and control requirements of this section.

(H) A joint venture is eligible if the disadvantaged business enterprise partner of the joint venture meets the standards for an eligible disadvantaged business enterprise set forth previously and the disadvantaged business enterprise partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture.

(I) A joint venture is eligible to compete in a disadvantaged business enterprise set-aside if the disadvantaged business enterprise partner of the joint venture meets the standards of an eligible disadvantaged business enterprise set forth previously, and the disadvantaged business enterprise partner's share in the ownership, control and management responsibilities, risks and profits of the joint venture is at least fifty-one percent (51%) and the disadvantaged business enterprise partner is responsible for a clearly defined portion of the work to be performed.

(J) A business wishing to be certified as a disadvantaged business enterprise or joint venture disadvantaged business enterprise by the department shall cooperate with the department in supplying additional information which may be requested in order to make a determination.

(K) Once certified, a disadvantaged business enterprise shall update its submission annually by submitting a new certification application or submitting only the documents that have changed since the last certification application was submitted and certifying that the updated certification application on file is accurate. At any time there is a change in ownership or control of the firm, the disadvantaged business enterprise shall submit a new certification application.

(L) The denial of a certification by the department shall be final, for that contract and other contracts being let by the department at the time of the denial of certification. Disadvantaged business enterprises and joint ventures denied certification may correct deficiencies in their ownership and control and apply for certification only for future contracts.

(M) The department shall safeguard from disclosure to unauthorized persons information that reasonably may be regarded as confidential business information, consistent with federal, state and local law.

AUTHORITY: sections 226.020 and 226.150, RSMo (1986), section*

1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994.

**Original authority: 226.020, RSMo (1939) and 226.150, RSMo (1939), amended 1977.*

7 CSR 10-8.020 Definitions

PURPOSE: This rule defines terms applicable to the Disadvantaged Business Enterprise Program.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Commission means the Missouri Highways and Transportation Commission.

(2) Department means the Missouri Highways and Transportation Department.

(3) Disadvantaged business enterprise (DBE) means a small business as defined in Title 49 Code of Federal Regulations part 23, and its Appendices B and C, which has been certified by the department as such. This term includes a firm described as a "minority business enterprise" or "MBE" in 49 CFR part 23. For the sole purpose of determining the DBE participation allowable toward meeting a DBE contract goal, the term also includes a firm which is no longer certified by the department, but which was certified by the department and eligible as a DBE when it was awarded a contract or subcontract to perform a commercially useful function on a project, to fulfill part or all of a DBE contract goal.

(4) Disadvantaged business enterprise committee consists of the assistant to the chief engineer-operations, the chief counsel and the division engineer of construction, or their designees. If any of these positions is vacant, the chief engineer shall appoint an alternate engineer or attorney, as appropriate, to sit on this committee during that vacancy.

(5) Division means the construction division of the Missouri Highways and Transportation Department.

(6) DBE means a disadvantaged business enterprise.

(7) DBE contract goal means the goal for DBE participation in a particular federal-aid contract, established pursuant to 49 CFR part 23.

(8) DBE participation means the dollar value of the contract or subcontract awarded a DBE which is eligible for credit toward the DBE contract goal because that DBE performed a commercially useful function in the work of that contract, in compliance with 49 CFR part 23.

(9) Local government means a city, county, or other authorized public governmental entity in Missouri which awards a contract governed by 49 CFR part 23 requiring DBE participation and having a DBE contract goal, which contract is funded at least in part by United States Department of Transportation funds.

(10) Mentor means an established firm that provides a disadvantaged business enterprise with advice, assistance, training, or a combination of these.

(11) Mentor-protege agreement means a written agreement between a mentor and a protege as defined in 7 CSR 10-8.060.

(12) Protege means a DBE as defined in section (3).

AUTHORITY: sections 226.020 and 226.150, RSMo (1994), section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency amendment filed Feb. 15, 1996, effective Feb. 25, 1996, expired Aug. 22, 1996. Amended: Filed Feb. 15, 1996, effective Aug. 30, 1996.*

**Original authority: 226.020, RSMo (1939) and 226.150, RSMo (1939), amended 1977.*

7 CSR 10-8.030 Procedures for Certifying Disadvantaged Business Enterprises

PURPOSE: This rule sets forth the procedures for certifying disadvantaged business enterprises.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or

expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) All Missouri applicants for certification shall be furnished an application, a copy of which follows these rules, a letter of instruction, a copy of section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 and a copy of Title 49 Code of Federal Regulations part 23. The application must be signed and notarized by an authorized representative of the business entity.

(2) Each application received shall be reviewed for completeness and the applicant will be notified of any additional information needed. An on-site review will be scheduled after all information is received. Minutes of the on-site review will be made and a copy of these minutes will be given to the applicant at the close of the review. If the additional information is not received, the application will be deferred.

(3) A final review of the application, additional information and review minutes will be made and the applicant shall be notified of the findings.

(A) If certified, the applicant will be advised of the conditions under which eligibility is maintained and the certification expiration date.

(B) If denied certification, the applicant will be advised of the facts that led to the denial. A copy of the portion of the law concerning denial will be furnished the applicant. The applicant will have fourteen (14) days to request an informal hearing with the division engineer of construction or his/her designated representative or furnish additional information for the purpose of appealing the denial.

1. If the applicant requests an informal hearing, the division will advise the applicant of the time, date, place, department representative, additional information needed and the items to be reviewed. This is not a contested case under Chapter 536, RSMo. The rules of evidence shall not apply at the hearing.

2. If an informal hearing is not requested or additional information not furnished, the applicant will be notified of the right to appeal to the United States Department of Transportation.

3. If the informal hearing or additional information documents that the applicant can

be approved, the applicant will be notified as outlined in subsection (3)(A).

4. If the informal hearing or additional information documents that the applicant cannot be approved, the applicant will be notified of the right to appeal to the United States Department of Transportation.

(4) All non-Missouri applicants for certification shall meet the requirements of sections (1)—(3) except an on-site review will not be made.

(A) Each non-Missouri applicant must be currently certified as a disadvantaged business enterprise in the state where its principal place of business is located before becoming certified in Missouri.

(B) The certification of a non-Missouri disadvantaged business enterprise shall expire after one (1) year or when its certification expires in the state where its principal place of business is located, whichever occurs first.

AUTHORITY: sections 226.020 and 226.150, RSMo (1986), section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994.*

**Original authority: 226.020, RSMo (1939) and 226.150, RSMo (1939), amended 1977.*

7 CSR 10-8.040 Procedures for Certification Renewal of Disadvantaged Business Enterprises

PURPOSE: This rule sets forth the procedures for certification renewal of disadvantaged business enterprises.

(1) Once certified, a disadvantaged business enterprise shall update its submission annually by either—submitting a new certification application and following the procedures of 7 CSR 10-8.030(1)—(4) with the exception that an on-site review may not be required and 7 CSR 10-8.030(3)(B)4. is omitted or submitting only the documents that have changed since the last certification application was submitted, following the procedures of 7 CSR 10-8.030(1)—(4) with the exception that an on-site review may not be required and 7 CSR 10-8.030(3)(B)4. is omitted and certifying that the updated certification application on file is accurate.

(A) If the informal hearing or additional information documents that the certification cannot be renewed, all information will be reviewed by the disadvantaged business enter-

prise committee. This review will consist only of previously submitted written or documentary information.

(B) If the disadvantaged business enterprise committee finds that the certification can be renewed, the applicant will be notified as outlined in 7 CSR 10-8.030(3)(A).

(C) If the disadvantaged business enterprise committee determines that the certification cannot be renewed, the applicant will be advised of its right to appeal to the United States Department of Transportation.

(2) The division will notify firms of the necessity to reapply approximately ninety (90) days prior to the certification expiration date.

(A) Renewal applications received at least thirty (30) days prior to the expiration date of an existing certification will cause the certification to remain in effect until the steps outlined in 7 CSR 10-8.030(1)—(4) have been completed. This extension may be terminated if the firm fails to cooperate in supplying information to the division within fourteen (14) days after receipt of a written request for the information.

(B) Renewal applications received later than thirty (30) days prior to the expiration date of an existing certification will cause the certification to expire and the firm will be considered a noncertified applicant during the review outlined in 7 CSR 10-8.030(1)—(4).

AUTHORITY: sections 226.020 and 226.150, RSMo (1986), section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994.*

**Original authority: 226.020, RSMo (1939) and 226.150, RSMo (1939), amended 1977.*

7 CSR 10-8.050 Challenge Procedures for Disadvantaged Business Enterprises

PURPOSE: This rule sets forth the challenge procedures for disadvantaged business enterprises.

(1) Any third party may challenge the socially and economically disadvantaged status of any individual presumed to be socially and economically disadvantaged pursuant to 7 CSR 10-8.010(4), provided that the challenged individual is an owner of a business certified by or seeking certification from the department as a disadvantaged business enterprise. Only a signed, written challenge

which includes all information available to the challenging party shall be accepted by the department. An individual who has a current certification pursuant to section 8(a) of the Small Business Act may not be challenged. The presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect until the department makes a final determination.

(2) The division shall evaluate the information provided by the challenging party to determine whether the challenged party is in fact not socially and economically disadvantaged.

(A) Should the division determine the information presented is insufficient to substantiate that the challenged party is not socially and economically disadvantaged, the division shall so inform the challenging party in writing. This decision is final and terminates the challenge procedure.

(B) Should the division determine the information presented is sufficient to substantiate that the challenged party is not socially and economically disadvantaged, the division shall begin a procedure as provided in this rule.

1. The division shall serve the challenged party with a written notice of challenge. The notice shall include:

A. A statement that the status of a socially and economically disadvantaged individual has been challenged;

B. Identification of the challenging party;

C. Summary of the grounds for the challenge;

D. Identification of all information or documents submitted in support of the challenge; and

E. A statement that the challenged party shall have fourteen (14) days after receipt within which to respond to the challenge and provide the division with information to permit evaluation of the socially and economically disadvantaged status of the individual. Failure to provide the requested information within the specified time shall result in decertification or denial of certification.

2. The division shall evaluate the available information in accordance with the socially and economically disadvantaged standards and make a determination of whether the challenged party meets the standards.

3. The division shall notify both parties of this determination in writing, setting forth the reasons for the determination. In order to respond to this proposed determination, the division shall provide an opportunity for the

parties to participate in an informal hearing or provide additional written information. If the request for an informal hearing is not filed or additional written information is not received within fourteen (14) days of receipt of the proposed determination, the department shall make a final determination based on available information.

4. The division shall schedule an informal hearing with the challenged, challenging parties, or both, and the division engineer of construction or his/her designated representative upon receipt of a written request. This is not a contested case under Chapter 536, RSMo. The rules of evidence shall not apply at the hearing.

5. If the division rules in favor of the disadvantaged business enterprise, the parties shall be informed in writing of the final determination setting forth the reasons for the determination. The parties shall be notified of the right to appeal to the United States Department of Transportation.

6. If the division rules against the disadvantaged business enterprise, all information will be reviewed by the disadvantaged business enterprise committee. This review will consist of previously submitted written or documentary information.

7. When the disadvantaged business enterprise committee makes its determination, the department shall inform the parties in writing of the final determination setting forth the reasons for the determination. The parties shall be notified of the right to appeal to the United States Department of Transportation.

AUTHORITY: sections 226.020 and 226.150, RSMo (1986), section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994.*

**Original authority: 226.020, RSMo (1939) and 226.150, RSMo (1939), amended 1977.*

7 CSR 10-8.060 Requirements to Participate in a Mentor-Protege Agreement

PURPOSE: This rule sets forth the requirements to participate in a mentor-protege agreement.

(1) A mentor-protege agreement allows development of disadvantaged business enterprises through specialized assistance from established firms. Certified disadvantaged business enterprises are eligible for participa-

tion. The department will consider approval of a disadvantaged business enterprise application for certification concurrently with a mentor-protege arrangement.

(2) Requirements for Mentor-Protege Agreements. The agreement shall—

(A) Set forth the objectives of the parties and their respective roles;

(B) Be for a specified length of time, but not longer than three (3) years;

(C) Describe measurable benchmarks to be reached by the protege at successive stages of the agreement;

(D) Provide that, if resources of the mentor are utilized by the protege, the resources must be separately identified, accounted for and compensated directly by the protege to the mentor. Extensive use of the mentor's resources by the protege will be closely monitored by the department;

(E) Include training to be provided by the mentor. The training may include, but is not limited to, business planning, recordkeeping, technical, capital formation, loan packaging, financial counseling, bonding and equipment utilization;

(F) Contain a provision that it may be terminated by mutual consent of the mentor and protege or by the department upon determination that—

1. The protege no longer meets the eligibility standards for certification as a disadvantaged business enterprise;

2. Either party has failed or is unable to meet its obligations under the agreement;

3. The protege is not progressing or is not likely to progress in accordance with the agreement;

4. The protege has reached a satisfactory level of self-sufficiency to compete without resorting to special treatment provided in the agreement; and

5. The agreement or provisions of the agreement are contrary to the requirements of federal, state or local law;

(G) Include a provision that the agreement may be dissolved by either party for reason by notifying the department;

(H) Contain the kinds of mentor skills provided to the protege; and

(I) Require the mentor and the protege to make separate reports to the department every six (6) months from the date of approval by the department.

(3) Procedures for Approval of Mentor-Protege Agreements.

(A) The disadvantaged business enterprise shall submit a written agreement to the division for approval.

(B) Additional information may be requested and approval of the agreement will be deferred until the information is received.

(C) If approved, the protege will be advised of the conditions under which eligibility is maintained and the agreement expiration date. If a disadvantaged business enterprise application is approved concurrently with the mentor-protege agreement, a letter of certification will also be enclosed.

(D) If not approved, the protege will be advised why the agreement is not acceptable. The protege will have fourteen (14) days to request an informal hearing with the division engineer of construction or his/her designated representative or provide additional information for the purpose of appealing the decision.

1. If the protege requests an informal hearing, the division will advise the protege of the time, date, place, department representative, additional information needed and the items to be reviewed. This is not a contested case under Chapter 536, RSMo. The rules of evidence shall not apply at the hearing.

2. If an informal hearing is not requested or additional information not furnished, the protege will be notified of the right to appeal to the United States Department of Transportation.

3. If the informal hearing or additional information furnished documents that the protege can be approved, the protege will be notified as outlined in subsection (3)(C).

4. If the informal hearing or additional information furnished documents that the protege cannot be approved, the information will be reviewed by the disadvantaged business enterprise committee. This review will consist only of previously written or documented information.

5. If the disadvantaged business enterprise committee finds that the protege can be approved, the protege will be notified as outlined in subsection (3)(C).

6. If the disadvantaged business enterprise committee determines that the protege cannot be approved, the protege will be advised of his/her right to appeal to the United States Department of Transportation.

(E) The protege may make the necessary corrections and reapply.

(4) Administration of Mentor-Protege Agreements.

(A) The mentor shall provide the division with a report summarizing the kinds of mentor skills provided to the protege including hours and areas of involvement such as managerial, technical or financial. The protege shall provide the division with a report summarizing the kinds of services received from

the mentor including all agreements, leases, loan instruments, contractual agreements, equipment rental schedules and bills of sale.

1. These reports shall be submitted every six (6) months from the date of approval by the department.

2. The division shall notify both the mentor and protege approximately thirty (30) days before the reports are due. Failure to submit the report within fourteen (14) days following the due date will terminate the agreement.

3. The reports will be reviewed and, if acceptable, the mentor and protege will be notified.

4. Additional information or documentation will be requested if the report is not acceptable. This information must be furnished within fourteen (14) days or the agreement will be terminated.

5. If the additional information is satisfactory, the mentor and protege will be advised as outlined in paragraph (4)(A)3.

6. If additional information and documentation are found unacceptable, the mentor and protege will be so advised pointing out the specific areas of violation of the agreement.

7. Failure to correct the violations of the approved agreement with the submittal of the subsequent six (6)-month report will result in termination of the mentor-protege agreement and the protege will be notified of its appeal rights to the United States Department of Transportation.

AUTHORITY: sections 226.020 and 226.150, RSMo (1986), section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994.*

**Original authority: 226.020, RSMo (1939) and 226.150, RSMo (1939), amended 1977.*

7 CSR 10-8.070 Decertification Procedures for Disadvantaged Business Enterprises

PURPOSE: This rule sets forth the decertification procedures for disadvantaged business enterprises.

(1) Decertification procedures may be initiated by any person against a certified disadvantaged business enterprise. The complaint must be written and signed by the person initiating the complaint. The complaint must be submitted to the department. The certifica-

tion of the disadvantaged business enterprise in question shall remain in effect until a final determination is made by the department.

(2) The division will evaluate the information submitted concerning the disadvantaged business enterprise to determine whether the complaint has merit.

(A) Should the division determine there is no merit, the complaining party will be advised in writing. This decision is final and terminates the procedure.

(B) Should the division determine that the complaint has merit, the division shall serve the disadvantaged business enterprise with a written notice of the following:

1. A summary of the complaint;

2. Identification of the party making the complaint;

3. A statement that an investigation has been initiated;

4. Identification of all information which supports the complaint; and

5. A statement that the disadvantaged business enterprise shall have fourteen (14) days to respond to the complaint in writing.

(C) Failure by the disadvantaged business enterprise to respond in writing, within the specified time, shall result in decertification by the department. All parties will be informed of this action and the decertified firm notified of its appeal rights to the United States Department of Transportation.

(D) If the disadvantaged business enterprise does respond in writing within the specified time, then the division shall evaluate the available information and determine if the disadvantaged business enterprise should remain certified.

1. The division shall notify both parties of this proposed determination in writing, setting forth the reasons. In order to respond to this proposed determination, the division shall provide an opportunity for the parties to participate in an informal hearing with the division engineer of construction or his/her designated representative or provide additional written information. If the request for an informal hearing is not filed or additional written information is not received within fourteen (14) days of receipt of the proposed determination, the division shall make a final determination based on available information.

2. The division shall schedule an informal hearing with the disadvantaged business enterprise and the complaining party upon receipt of a written request. This is not a contested case under Chapter 536, RSMo. The rules of evidence shall not apply at the hearing.

3. If the division rules in favor of the disadvantaged business enterprise, the parties



will be informed in writing setting forth the reason for the determination. The parties shall be notified of the right to appeal to the United States Department of Transportation.

4. If the division rules against the disadvantaged business enterprise, all information will be reviewed by the disadvantaged business enterprise committee. This review will consist of previously submitted written or documentary information.

5. When the disadvantaged business enterprise committee makes its determination, the department shall inform the parties in writing of the final determination setting forth the reasons for the determination. The parties shall be notified of the right to appeal to the United States Department of Transportation.

AUTHORITY: sections 226.020 and 226.150, RSMo (1986), section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994.*

**Original authority: 226.020, RSMo (1939) and 226.150, RSMo (1939), amended 1977.*

CERTIFICATION APPLICATION

Note: If, after filing this application, and prior to the expiration of your certification, there is any change in the ownership and/or management of this firm, you must notify the Missouri Highway and Transportation Department in writing within two (2) weeks after the change. Failure to comply with this requirement may lead to a loss of certification.

I. GENERAL INFORMATION

1. AUTHORIZED NAME OF FIRM _____

2. STREET ADDRESS OF FIRM _____ TELEPHONE NUMBER (INC. AREA CODE) _____

3. MAILING ADDRESS CITY STATE--ZIP CODE _____

4. NAME OF CHIEF EXECUTIVE OFFICER _____

5. PERSON(S) PREPARING THIS APPLICATION

NAME	ADDRESS	TITLE

CODE

- Disadvantaged: D
- Black American B
- Hispanic American H
- Native American N
- Asian-Pacific American P
- Asian-Indian American I
- Women W

6. LEGAL STRUCTURE OF FIRM

_____ Sole Proprietorship _____ Partnership _____ Corporation
 _____ Limited Liability Company

Is your firm registered with the Missouri Secretary of State:
 Yes _____ No _____

If yes, state how: _____ Fictitious Name _____ Corporation
_____ Partnership or Limited Partnership _____ Limited Liability Company

7. WHAT IS THE NUMBER OF THE FIRM'S ANNUAL FULL-TIME WORK FORCE?

A. NUMBER OF EMPLOYEES:

	Full Time	Part Time
a. Administrative	_____	_____
b. Sales	_____	_____
c. Manufacturing	_____	_____
d. Other	_____	_____

8. TYPE OF BUSINESS:

Construction _____ (bridge, highway, etc.)	Manufacturing _____
Consulting _____ (engineering, architect, etc.)	Service _____
	Supplier _____
	Other (specify) _____

9. A. DATE BUSINESS ESTABLISHED _____

B. DATE CURRENT OWNER PURCHASED THE MAJORITY OWNERSHIP OF THE FIRM

C. LIST OTHER BUSINESS NAMES PREVIOUSLY USED:

D. HAS YOUR FIRM APPLIED FOR REORGANIZATION UNDER CHAPTER 11 AND/OR LIQUIDATION UNDER CHAPTER 7, WITHIN THE LAST THREE YEARS?

YES _____ NO _____

10. IDENTIFICATION NUMBERS AND CERTIFICATION:

A. FEDERAL IDENTIFICATION NUMBER _____

B. ARE YOU AN SBA 8(A) CERTIFIED BUSINESS?

YES _____ NO _____

(IF YES, ATTACH A COPY OF CURRENT CERTIFICATION)

C. IF CERTIFIED AS A DBE, MBE OR WBE BY ANY OTHER FEDERAL, STATE, OR LOCAL AGENCY, ATTACH A COPY OF THE CURRENT CERTIFICATION(s).

11. HAS THIS FIRM OR ANY OF ITS OWNERS, MEMBERS OF THE BOARD OF DIRECTORS, OFFICERS, OR MANAGEMENT PERSONNEL EVER BEEN DENIED CERTIFICATION OR DECERTIFIED AS A DBE, MBE OR WBE BY ANY AGENCY IN ANY STATE?

YES _____ NO _____

(If YES, indicate state(s), agency(s) and date(s))

PROVIDE A COPY OF THE DENIAL OR DECERTIFICATION LETTER(S).