

Procedure Name:	Small Business Enterprise Certification Program				
Procedure #:	RTD-SBO-PRC-0002	Date Issued:	2023-09-15	Current Version:	B
General Manager Approval:					
Chief Administrative Officer Approval:	 <i>Doug MacLeod for Leah Riley</i>				
Responsible Department:	Administration				

1. PURPOSE AND SCOPE

The Office of Small Business Opportunity (SBO) establishes this procedure to carry out its responsibilities in the administration of Regional Transportation District's (RTD) Small Business Enterprise (SBE) Certification Program. The purpose of this procedure is to establish certification eligibility rules and the procedures to implement and administer certification processes.

RTD's SBE Certification Program ensures that only firms that fully meet the RTD SBE Certification Eligibility Criteria and Rules are permitted to participate as SBEs on RTD's locally-funded contracts. Additionally, RTD will use the RTD SBE Certification Program for purposes of complying with USDOT Disadvantaged Business Enterprise (DBE) requirements regarding Fostering Small Business participation as defined in 49 CFR Part 26.39 and as approved in the RTD DBE Program Plan.

RTD has adopted and may use some of the certification standards of Subpart D of 49 CFR Part 26 and the certification procedures of Subpart E of 49 CFR Part 26 to determine the eligibility of firms to participate as SBEs in RTD's SBE Certification Program.

2. DEFINITIONS

Term	Definition
Adjusted Personal Net Worth	The primary owner(s) personal net worth after the allowable exclusions (i.e., equity in primary residence, value of ownership interest in applicant business) have been subtracted.
Anniversary	The annual date is based on the last day of the month in which SBE certification is granted.

Annual update	The documents and information to be provided to RTD on an annual basis in order to determine the SBE's continued eligibility for the program, as further described in this document.
Application	Any application documents and supplemental materials necessary for RTD to determine whether a firm is eligible for SBE certification.
Assets	All the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, individual retirement accounts or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, automobiles and personal property.
Broker	A firm that arranges or expedites transactions of supplies.
Business, Firm, Business Concern or Business Enterprise	An entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor.
Category	Eligible firms will be classified into one of four categories depending on their three-year average gross receipts as identified by the RTD SBO Office and 49 CFR Part 26.
Certification	A determination by RTD that a firm is eligible to participate in the SBE Program as an SBE, subject to continued compliance with the SBE Certification Program Procedures. Certification neither represents nor implies that a firm or individual is qualified or competent to perform on a contract.
Controlling Interest	Ownership of 51% or more of the firm by one person or ownership of the largest single portion of the firm by one person if no one person holds 51% or more.
Days	Calendar days, unless otherwise specified. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday or federal holiday, the period extends to the next day that is not a Saturday, Sunday, or federal holiday. Similarly, in circumstances where the RTD's offices are closed for all or part of the last day, the period extends to the next day on which RTD is open.
Denial of Certification	Written notification provided by RTD to the applicant stating that RTD has determined that the applicant is not eligible for SBE certification.
Immediate Family Member	Father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-

	law, brother-in-law and domestic partner and civil unions recognized under State law.
Incomplete Application	An application that does not contain sufficient information to make a determination of eligibility.
Informal Hearing	An in-person, phone, or virtual meeting with an RTD representative (who was not involved in the SBE application approval/denial process) at which a firm may attempt to establish why the firm should be certified following a Denial of Certification.'
Joint Venture	An association of an SBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge and in which the SBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest.
Lease	A capital lease is where a firm has sole and exclusive right to and responsibility for the equipment under consideration. For purposes of SBE certification, a short-term rental is not considered a lease.
Letter of Certification or Certification Letter	Written notification from RTD to the applicant stating that the business has been certified as an SBE.
Liabilities	Any financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate and unpaid taxes.
Manufacturer	A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment for which it seeks to be certified for.
North American Industry Classification System (NAICS)	The standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the United States business economy.
Personal Net Worth	The net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: the individual's ownership interest in an applicant or participating SBE firm; or the individual's equity in their primary place of residence. An individual's personal net worth includes only their own share of assets held jointly or as community property with the individual's spouse.
Principal Place of Business	The firm location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from

	which management is directed and where the business records are kept are in different locations, RTD will determine the principal place of business.
Qualifying Owner	An owner of the applicant firm whose personal net worth does not exceed the threshold defined in 49 CFR part 26.67(a) and who is a United States citizen or lawful permanent resident.
Recertification	The date a firm is eligible to become recertified as an SBE, which shall occur six years from the date a firm becomes certified.
Receipts	An official record that represents proof of a financial transaction or purchase. For the purpose of this policy and procedure, annual receipts is the “total income” (or “gross income”) plus the “cost of goods sold” for a firm during a fiscal year. These numbers can normally be found on the business’s IRS tax return forms.
Regular Dealer	A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. Sometimes Wholesaler is used instead of Regular Dealer. These terms are used interchangeably.
Revocation	The removal of SBE certification.
Small Business Enterprise (SBE)	A for-profit small business concern that is: (1) at least 51% owned by one or more qualifying owners or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more qualifying owners.
Spouse	A married person, including a person in a domestic partnership or a civil union recognized under State law.

3. RESPONSIBILITIES

RTD’s SBE Certification Program is adopted and approved by RTD’s General Manager and CEO.

RTD’s SBE Certification Program is administered by the Office of Small Business Opportunity (SBO). The SBO Office retains the authority to make rules governing eligibility for RTD’s SBE Certification Program and to create procedures to implement those rules.

The SBO Office reserves the right at any time to revise, edit and update the RTD SBE Certification Program Procedure and all applicable components.

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4. PROCEDURE

A. Eligibility

In determining whether to certify a firm as an eligible SBE, RTD will apply the following rules:

1. General provisions

- a. The firm seeking SBE certification has the burden of demonstrating to RTD, by a preponderance of the evidence, that it meets the requirements of this SBE Certification Program Procedure concerning business size, personal net worth, ownership and control.
- b. RTD's SBE Certification Program is a race- and gender-neutral program. The firm must be at least 51% owned and controlled by one or more qualifying owners.

2. Business size

- a. To be an eligible SBE, the average annual gross receipts of a firm (including its affiliates) over its previous three fiscal years must be less than the current cap defined by USDOT in 49 CFR part 26.65(b).
- b. An affiliation will be determined in accordance with the Small Business Administration (SBA) regulations, 13 CFR part 121, which provides that:
 - (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or
 - (ii) A third party or parties control(s) or has the power to control both; or
 - (iii) An identity of interest between or among parties exists such that affiliation may be found.
- c. Eligible firms will be classified into one of four of the below categories depending on their three-year average gross receipts. Categories 1 to 3 below are determined by the RTD SBO Office; whereas, the upper threshold for gross receipts are set in accordance with 49 CFR Part 26 and are subject to change.
 - Category 1: Firms with gross receipts less than \$1 million;
 - Category 2: Firms with gross receipts between \$1 million and \$5 million;
 - Category 3: Firms with gross receipts between \$5 million and \$10 million;
 - Category 4: Firms with gross receipts greater than \$10 million but less than \$30.4 million.

3. Qualifying ownership

- a. RTD will require each individual owner of a firm applying to participate as an SBE, whose ownership and control are relied upon for SBE certification, to provide a signed and notarized RTD individual personal financial statement with appropriate supporting documentation, including personal federal income tax returns.

- b. In determining personal net worth, RTD will exclude an individual's ownership interest in the applicant firm and the individual's share of equity in their primary residence. RTD will include the present value of assets, including retirement assets or investment programs.
- c. If the individual personal financial statement shows that the individual's adjusted personal net worth exceeds a certain dollar amount as identified in 49 CFR Part 26, the individual is not considered to be a qualifying owner; their ownership and control of the firm in question cannot be used for purposes of determining SBE eligibility.
- d. RTD may review any transfers of assets to or from the applicant and/or to or from any of its owners over the past two years, including any marital transfer. Unless the individual claiming qualifying owner status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses or some other form of essential support, the asset in question will be included for purposes of determining personal net worth.
- e. To the extent permissible under relevant law, the SBO Office will not release an individual's personal financial statement, nor any documents pertaining to it, to any third party without the written consent of the submitter or a determination made by RTD's Legal Department pursuant to the CORA requirements.

4. Ownership

- a. In determining whether the qualifying owner in a firm owns the firm, RTD will consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.
- b. An eligible SBE firm must be at least 51% owned by one or more qualifying owners:
 - i. In a corporation, one or more qualifying owners must own at least 51% of each class of voting stock outstanding and 51% percent of the aggregate of all stock outstanding.
 - ii. In a partnership, 51% of each class of partnership interest must be owned by one or more qualifying owners and must be documented in the firm's partnership agreement.
 - iii. In a limited liability company, at least 51% of each class of member interest must be owned by one or more qualifying owners and documented in the LLC's operating agreement.
- c. Where ownership of the firm is held by a holding company, the same qualifying owner who controls the applicant firm must own at least 51% of the holding company.
- d. Where ownership of the firm is held in trust, ownership interests held in trust may be considered to be held by a qualifying owner for purposes of determining ownership of the firm if the beneficiary of assets held in trust is a qualifying owner

who also exercises control of the firm, and the trustee is the same or another such individual.

- e. The contributions made by the qualifying owner to acquire their ownership interest(s) must be proportionate to the interest acquired. The contribution must be proportionate to the value of the firm at the time of the transaction. The contribution must be derived from the qualifying owner's individual assets.
- f. RTD will evaluate transfers of ownership to a qualifying owner from an ineligible individual, especially when the ineligible individual retains ownership or remains involved with the firm. In analyzing any transfer of assets or ownership interest, RTD will review any inter-spousal transfers made to ensure the qualifying owner has sufficient ownership and control of the firm.
- g. RTD may request additional information if it has reason to believe that the qualifying owner's ownership may be different than what is reported in the application or that some scheme or intent to circumvent the intention/objectives of the SBE Program requirements is suspected/present.

5. Control

- a. Only an independent firm may be certified as an SBE. An independent firm is one whose viability does not depend on its relationship with a non-SBE firm or firms.
 - i. In determining whether a firm is an independent business, RTD will evaluate relationships with non-SBE firms in areas such as shared personnel, facilities and equipment in comparison with standard industry practice. RTD will review the applicant's financial and bonding support and other resources.
 - ii. RTD will examine the firm's relationships with prime and subcontractors to determine whether a pattern of exclusive or primary dealings compromises the independence of the firm.
 - iii. A franchise agreement does not preclude a firm's inclusion in the SBE certification program. RTD will review the franchise agreement to determine what binding effect the franchise agreement has on the firm's ability to operate independently.
- b. The qualifying owner(s) must possess the formal power to control the firm.
 - i. In a corporation, the qualifying owner(s) must control the board of directors. A qualifying owner must hold the highest officer position, i.e., chief executive officer or president.
 - ii. In a limited liability company, a qualifying owner must be a managing member with control over all company decisions.
 - iii. In a partnership, a qualifying owner must be a general partner with control over all partnership decisions.
- c. The qualifying owner(s) must have technical expertise in the specific areas directly related to the type of work the firm performs and for which it is seeking certification. The qualifying owner is not required to perform the work of the firm, but the owner must have the ability to intelligently and critically evaluate

information presented by subordinates or other participants and be able to use this information to make independent decisions concerning the firm's daily operations, management and policymaking. Expertise limited to office management, administration or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

- d. While the delegation of some aspects of management, policymaking or daily operations is permissible, the qualifying owner(s) must retain the authority to revoke the delegation and have the power to fire the person to whom the delegation is made.
 - e. The firm's qualifying owner(s) must hold any licenses or credentials required by state or local law to engage in the firm's operations. Merely hiring someone with a license, credential or specialized training may not meet the control requirements for purposes of the RTD SBE Certification Program requirements. It will be evaluated on a case-by-case basis.
 - f. In determining whether a firm is controlled by its qualifying owners, RTD will consider whether the firm owns the equipment necessary to perform its work. A firm must own or lease the equipment necessary to engage in the operations for which it seeks certification.
 - g. RTD will grant certification to a firm only for specific types of work in which the qualifying owners have the ability to control the firm. To become certified in an additional type of work, the firm must demonstrate to RTD that its qualifying owners are able to control the firm with respect to that type of work. RTD will verify the qualifying owner's control of the firm in the additional type of work.
6. North American Industry Classification System (NAICS) Code Determination
- a. RTD will certify an SBE firm only for specific types of work in which the eligible owners have the ability to control the firm.
 - b. RTD will list each type of work for which an SBE is eligible to be certified by the most specific NAICS code available to describe each type of work.
 - c. If there are redundant NAICS codes/descriptors requested, RTD will choose those best suited to the firm's work without repetition.
 - d. Suppliers (i.e., manufacturer, regular dealer, broker)
 - i. To become certified as an SBE manufacturer, a firm must operate or maintain a factory or establishment that produces the materials, supplies, articles or equipment it seeks to become certified to provide.
 - ii. To become certified as an SBE regular dealer (wholesaler), a firm must own, operate or maintain a store, warehouse or other establishment in which the materials, supplies, articles or equipment for which it seeks certification are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A firm must maintain a viable inventory of the products in question, not simply a token quantity.

- (a) A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt (i.e., raw materials) without owning, operating or maintaining a place of business as provided in this paragraph (c)(2)(ii) if the firm both owns and operates distribution equipment for the products.
- iii. Packagers, brokers, manufacturers' representatives or other firms who arrange or expedite transactions are not regular dealers within the meaning of the SBE Certification Program Procedure.

7. Additional Eligibility Rules

- a. The firm seeking to be certified as an SBE must be a for-profit business; non-profit and not-for-profit firms are not eligible to apply for SBE certification.
- b. The firm seeking SBE certification must be an operational business. A firm whose principal place of business is in Colorado must be in good standing with the Colorado Secretary of State. A firm whose principal place of business is outside Colorado must be in good standing with the Secretary of State in its home state and must have a current foreign entity registration with the Colorado Secretary of State.
- c. Applications may be denied based on a failure to meet any eligibility requirement.
- d. Firms owned by individuals who are current RTD employees, temporary employees or individual contractors augmenting RTD staff are ineligible for certification.
- e. Joint ventures are not eligible to apply for SBE certification. One or more joint venture partners may be a certified SBE if all eligibility requirements are met.
- f. SBE firms and firms seeking SBE certification shall cooperate fully with RTD's requests for information relevant to the certification process. Failure or refusal to provide such information within the timeframe provided by RTD is grounds for denial or removal of certification.
- g. An applicant may withdraw its application at any time prior to a formal determination. If an applicant for SBE certification withdraws its application before RTD has issued a decision on the application, the applicant can resubmit the application at any time.
- h. RTD may deny an application if its review reveals changes have been made solely for the intent of gaining SBE certification or that circumvent the intention or objectives of RTD's SBE Program.

B. Rules Governing Certification Applications

- 1. The following documents must be included with each new SBE application:
 - a. A completed, signed, and notarized RTD SBE Certification Application;
 - b. A completed, signed, and notarized RTD individual personal financial statement for each qualifying owner comprising 51% or more ownership of the firm;

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- c. Current resumes, including education and dates and places of employment with duties and responsibilities held, for all owners, directors, officers, and key personnel;
 - d. Copies of federal income tax returns, including all supporting schedules and attachments, for the firm and all affiliates for the past three years;
 - e. Copies of personal federal income tax returns, including all supporting schedules and attachments, for each qualifying owner for the past three years;
 - f. Copies of all licenses necessary to engage in the firm's operations;
 - g. An itemized list of all equipment owned and leased by the firm;
 - h. A Certificate of Good Standing issued by the Colorado Secretary of State;
 - i. An itemized list of inventory available for sale (for suppliers of goods only); and
 - j. Additional information that may be requested on a case-by-case basis.
2. Annual updates
- a. RTD will require each certified SBE to provide, every year on the Anniversary of its certification, a Change/No Change affidavit attesting that there have been no changes in the firm's ownership or control. If the firm fails to provide this affidavit in a timely manner, it will be deemed to have failed to cooperate under Section (4)(A)(7)(f) of this document.
 - b. The following documents must be included with each annual update:
 - i. A completed, signed and notarized RTD Change/No Change affidavit;
 - ii. Copies of federal income tax returns, including all supporting schedules and attachments, for the firm and all affiliates for the most recent year; and
 - iii. Other documentation deemed necessary by the SBO Office to determine the firm's ongoing eligibility for RTD SBE certification.
 - c. See Section below for more information Section 4.D. below.
3. Recertification
- a. Certification term
 - i. Once RTD has certified a firm as an SBE, it shall remain certified for a period of six years until and unless RTD has removed its certification, in whole or in part, through the procedures of Section (IV)(E)(2) of this document.
 - b. The following documents must be included with each recertification application:
 - i. A completed, signed and notarized RTD SBE Certification Application;
 - ii. A completed, signed and notarized RTD individual personal financial statement for each qualifying owner comprising 51% or more ownership of the firm;
 - iii. Complete copies of federal income tax returns, including all supporting schedules and attachments, for the firm and all affiliates for the most recent year (additional years may be requested);
 - iv. Complete copies of personal federal income tax returns, including all supporting schedules and attachments, for each qualifying owner for the past three (3) years;

- v. A Certificate of Good Standing issued by the Colorado Secretary of State; and
- vi. Additional information that may be requested on a case-by-case basis.
- c. See Section below for more information Section 4.E. below.

4. Mid-term changes

- a. Once certified, an SBE firm must notify RTD of any material change in the information provided in its application form concerning the firm's ownership, control, legal structure, work performed, scope of services or contact information.
 - i. The firm must provide RTD with written notification within 30 days of the occurrence of the change;
 - ii. The firm must attach supporting documentation describing in detail the nature of such changes; and
 - iii. If the firm fails to make timely notification of such a change, it will be deemed to have failed to cooperate under Section (4)(A)(7)(f) of this document.

5. RTD may investigate any third-party challenge or written accusation concerning a certified SBE to validate its continuing eligibility. RTD reserves the right to request any additional information to render a determination to ensure/validate the continuing eligibility of the certified SBE.

6. Denial of certification

- a. When it denies the application of a firm that is not currently certified as an SBE, RTD will provide the firm with a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial.
- b. Appeal process overview
 - i. When a firm's application is denied, it will be given an opportunity to request a hearing at which it may attempt to establish why the firm should be certified;
 - ii. Hearing requests must be made in writing to RTD within 30 days from the date of the letter referred to in paragraph a. of this section;
 - iii. While the firm has a right to an in-person meeting, it may elect to submit a written argument in lieu of an in-person meeting;
 - iv. The Director of RTD's Civil Rights Division will designate the individual to review the appeal. The individual designated to review the appeal must not have been involved in the initial determination to deny certification.
 - v. Following the hearing (or submission of a written argument), RTD will issue a final determination in writing;
 - vi. If a firm does not make a written request within 30 days of the date of the letter referred to in paragraph a. of this section, RTD will issue a final determination based on the existing record.
 - vii. If the decision is to deny, the decision will be the final agency action, with no further appeal rights.

- c. When a firm's application has been denied, it may reapply for SBE certification with RTD no sooner than 12 months from the date of the initial decision referred to in paragraph a. of this section. RTD can waive the time period for reapplication at its sole discretion.
- d. See Section below for more information Section 4.C.6. below.

7. Revocation of certification

- a. If the basis upon which SBE certification was granted has changed such that a firm is no longer eligible, RTD will begin proceedings to remove the firm's certification.
- b. RTD will provide the firm with a written explanation of the reasons for the revocation, specifically referencing the evidence in the record that supports each reason for the revocation.
- c. Appeal Process Overview
 - i. When a firm's certification is revoked, it will be given an opportunity to request an Informal Hearing during which it may establish why the firm should remain certified;
 - ii. Informal Hearing requests must be made in writing to RTD within 30 days from the date of the letter referred to in paragraph a. of this section;
 - iii. While the firm has a right to an in-person meeting, it may elect to submit a written argument in lieu of an in-person meeting;
 - iv. The Director of RTD's Civil Rights Division will designate the individual to review the appeal. The individual designated to review the appeal must not have been involved in the initial determination to deny certification.
 - v. Following the Informal Hearing (or submission of a written argument), RTD will issue a final determination in writing;
 - vi. If a firm does not make a written request within 30 days of the date of the letter referred to in paragraph a. of this section, RTD will issue a final determination based on the existing record.
 - vii. If the decision is to deny, the decision will be the final agency action, with no further appeal rights.
- d. An SBE firm will remain certified during the revocation process until a final determination is made.
- e. If a firm's certification is revoked, it will be immediately removed from the SBE directory.
- f. When a firm's certification has been revoked, it may reapply for SBE certification with RTD no sooner than 12 months from the date of the initial decision referred to in paragraph a. of this section. RTD can waive the time period for reapplication at its sole discretion.
- g. See Section below for more information Section 4.G.2. below.

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8. Confidentiality

- a. RTD will safeguard from disclosure to third parties information that may reasonably be regarded as confidential personal and business information, consistent with federal, state and local laws. This includes any information that was relied upon for the certification determination, annual update or recertification.

C. Certification Procedures

1. New Application

- a. RTD will make SBE certification decisions based on the facts as a whole.
- b. RTD will ensure that only firms certified as eligible SBEs under the SBE Certification Program Procedures participate in RTD's SBE program.
- c. To apply for SBE certification, firms must contact the RTD Small Business Opportunity Office via email at SBO@rtd-denver.com, or by phone on 303.299.2126.
- d. RTD will take the following steps in determining whether an applicant firm meets the requirements of the SBE Certification Program Procedure:
 - i. Require potential SBEs to complete and submit an appropriate application, signed and notarized;
 - (a) RTD will review all information on the application prior to making a decision about the eligibility of the firm. RTD may request clarification of information contained in the application at any time in the application process.
 - ii. Obtain complete copies of federal income tax returns (or requests for extensions) filed by the firm, its affiliates and the qualifying owners for the last three years. A complete return includes all forms, schedules and statements filed with the Internal Revenue Service;
 - iii. Obtain a list of equipment owned or leased by the firm;
 - iv. Obtain current resumes and licenses held by key personnel to perform the work it seeks to do as part of the SBE program;
 - v. Obtain copies of all licenses held by the firm;
 - vi. Perform an on-site visit to the firm's principal place of business under the following circumstances:
 - (a) When an applicant seeks certification as an SBE manufacturer, RTD will verify that the firm operates or maintains a factory or establishment that produces the materials, supplies, articles or equipment it seeks to become certified to provide;
 - (b) When an applicant seeks certification as an SBE regular dealer, RTD will verify that the firm owns, operates or maintains a store, warehouse or other establishment in which the materials, supplies, articles or equipment for which it seeks certification are bought, kept in stock and regularly sold or leased to the public in the usual course of business and that the firm

- maintains a viable inventory of the products in question and not simply a token quantity; and
- (c) When RTD deems it necessary, at its discretion;
- vii. Maintain a directory of all certified SBEs eligible to participate in RTD's SBE program. The listing for each firm will include address, phone number and the types of work (NAICS codes) the firm has been certified to perform as an SBE;
- viii. Endeavor to make certification decisions within 45 days of a complete application; and
- ix. Request additional information on a case-by-case basis.

2. Intake procedures

The following outline reflects the intake procedures that apply upon an initial application for recognition as an SBE:

- a. Within five days after the receipt of an application, the SBE Certification Specialist will verify that the application is complete and that the applicant has provided all required supporting documents. The SBE Certification Specialist will log the applicant's information into the database to begin the tracking process.
 - i. If the application is deemed complete, the SBE Certification Specialist will sort the submitted documentation into the appropriate sections and log the application as "ready for processing" and assign the application to the Certification Specialist for processing.
 - ii. If the application is incomplete, the SBE Certification Specialist will notify the applicant of the specific deficiencies by using the email address provided by the applicant or regular mail. The SBE Certification Specialist will log that additional information has been requested. The applicant will be given 14 days to provide the missing information. An extension not to exceed an additional 30 days may be granted under extenuating circumstances and with documentation to support the granting of an extension if warranted by the facts.
 - (a) If the applicant provides the requested information, and the file is deemed "ready for processing," the SBE Certification Specialist will assign the application to a Certification Specialist or designee for a full review of eligibility.
 - (b) If the applicant does not respond, the SBE Certification Specialist will close and write a memorandum to the file. The applicant will be notified in writing that the application has been closed.
 - iii. If the application is complete, the SBE Certification Specialist will assign the application to a Certification Specialist or designee for a full review of eligibility.
 - (a) The SBE Certification Specialist will assign cases to a Certification Specialist on a first-in/first-out basis to ensure equity in the processing of applications.

3. Initial certification procedures

The following outlines the procedures that RTD applies to make certification determinations:

- a. The SBE Certification Specialist will conduct a desk audit of the application and supporting documents to determine whether they are sufficient to make an eligibility determination.
- b. If the SBE Certification Specialist determines that additional documentation or information is required, the SBE Certification Specialist will notify the applicant in writing of the specific documents needed. The applicant will receive 14 days to provide the needed information. An extension not to exceed an additional 30 days may be granted under extenuating circumstances and with documentation to support the granting of an extension if warranted by the facts.
 - i. If the applicant does not respond, the SBE Certification Specialist will close and write a memorandum to the file. The applicant will be notified in writing that the application has been closed.
- c. Where an applicant withdraws its application, the SBE Certification Specialist will request documentation in writing of the withdrawal to keep on file. A firm that withdraws its application before RTD has rendered a certification decision may reapply at any time.

4. Eligibility determination procedures

- a. The SBE Certification Specialist will conduct a comprehensive review of the application to ensure that it does or does not meet the eligibility requirements set forth in Section 4.A. above, including:
 - i. The firm is operational and in good standing with the Colorado Secretary of State;
 - (a) Out-of-state applicants must provide a current Foreign Entity Authorization from the Colorado Secretary of State;
 - ii. The applicant is a small business with average annual revenues for the past three years lesser than the Category 4 gross receipts threshold identified in 49 CFR Part 26;
 - iii. The firm is at least 51% owned by one or more qualifying owners who are US citizens or lawful permanent residents;
 - iv. The firm is independent;
 - v. The firm possesses the facilities, equipment, personnel and licenses necessary to engage in its operations; and
 - vi. The qualifying owners possess the formal power, expertise and licenses/credentials necessary to control operations;
- b. The SBE Certification Specialist will prepare an eligibility recommendation for the SBO Office Manager summarizing the findings of the review.

5. Approval of SBE Certification procedures

If the recommendation is to certify, the SBE Certification Specialist will:

- a. Prepare a certification letter including the applicable NAICS codes;
- b. Email the original to the firm and put one copy in a file maintained by the RTD's Civil Rights Division;
- c. Update the SBE directory; and
- d. The Anniversary is the last day of the month of certification.

6. Denial of SBE certification and appeal procedures

If the recommendation is to deny:

- a. The SBE Certification Specialist will prepare an Intent to Deny letter on behalf of the SBO Office Manager. The Intent to Deny letter will list the specific SBE eligibility requirements the applicant failed to meet, referencing the evidence in the record that supports each reason for the proposed denial.
- b. The SBE Certification Specialist will send the Intent to Deny letter by certified mail to the firm's address on its application.
- c. When RTD notifies an applicant of its intent to deny SBE certification, it will give the firm an opportunity for an Informal Hearing, during which the firm may respond to the reasons for the proposed denial and provide information and any arguments concerning why it should be certified.
- d. Appeal requests must be made in writing no later than 30 days from the date of the Intent to Deny letter to:

RTD Small Business Opportunity Office
Attn: Small Business Opportunity Office Manager
1660 Blake St., BLK-31
Denver, CO 80202
SBO@rtd-denver.com

- e. In such a proceeding, the applicant bears the burden of proving that it meets certification standards cited in the Intent to Deny letter.
- f. While the right is to a hearing, the firm may submit its arguments in writing without attending the Informal Hearing, request that the Informal Hearing take place via teleconference or have the Hearing Officer base their decision on the written documents and oral statements/testimony.
- g. The Director of RTD's Civil Rights Division will designate the individual to review the appeal. The individual designated to review the appeal must not have been involved in the initial determination to deny certification.
- h. RTD will provide the firm written notice of its decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision.

- i. If the decision is to deny, the decision will be the final agency action, with no further appeal rights.

D. Annual Updates

1. Each certified SBE will be reviewed annually on the anniversary of its certification to ensure that it still meets the business size and personal net worth standards and that no changes in ownership or control have occurred.
2. Forty-five days before an SBE firm's certification anniversary, the SBE Certification Specialist will provide the firm written notification that an Annual Update is due and of the supporting documents required to be submitted. SBE firms will be required to submit:
 - a. A completed, signed and notarized Change/No Change Affidavit;
 - b. A complete copy of the most recent federal income tax return, including all schedules and attachments, for the firm and all affiliates; and
 - c. Other documentation deemed necessary by the SBO Office to determine the firm's ongoing eligibility for RTD SBE certification.
3. Within five days after the receipt of an annual update, the SBE Certification Specialist will verify that it is complete and that the firm has provided all required supporting documents. The SBE Certification Specialist will log the firm's information on the database to start the tracking process.
 - a. If the annual update is deemed complete, the SBE Certification Specialist will sort the submitted documentation into the appropriate sections, log the application as "ready for processing" and assign the annual update to a Certification Specialist for processing.
4. The Certification Specialist will review all the documents submitted to ensure the firm remains eligible.
 - a. The Certification Specialist will determine if the firm's average annual gross revenues for the past three years exceed the threshold for an SBE. If the firm's average annual gross revenues exceed the threshold, the Certification Specialist will issue the firm an Intent to Revoke letter by certified mail, allowing the firm an opportunity to appeal.
 - b. The Certification Specialist will review the personal net worth of the qualifying owner(s) to ensure they remain eligible. If the Certification Specialist determines that the individual's personal net worth exceeds the threshold, the Certification Specialist will notify the firm in writing of the fact.
5. If the SBE Certification Specialist does not receive any or all of the documents by the firm's Anniversary date, they will notify the firm of the deficiency by email. The notification will give the firm 14 days to show cause as to why it should remain certified. Should the firm fail to respond to the "show cause" notification, the Certification Specialist will send a final notification that the firm has been removed from RTD's SBE directory.

E. Recertification

1. Every six years on the Anniversary of a firm's certification, RTD will conduct a certification review to ensure that it still meets the business size and personal net worth standards and that no changes in ownership and control have occurred.
2. Forty-five days before an SBE firm's certification expiration, the SBE Certification Specialist will provide the firm written notification that its Recertification is due and of the supporting documents required to be submitted. SBE firms will be required to submit the following:
 - a. A completed, signed and notarized RTD SBE Certification Application;
 - b. A completed, signed and notarized RTD individual personal financial statement for each qualifying owner comprising 51% or more ownership of the firm;
 - c. A complete copy of the most recent federal income tax return, including all schedules and attachments, for the firm and all affiliates;
 - d. Complete copies of personal federal income tax returns, including all supporting schedules and attachments, for each qualifying owner for the past three years; and
 - e. A Certificate of Good Standing issued by the Colorado Secretary of State.
3. If an SBE fails to submit such documentation when requested (not later than 60 days), RTD will remove the firm's name from the SBE directory and consider the firm ineligible for continuing SBE certification.
4. RTD reserves the right to require and conduct an on-site interview/visit when there are significant changes to corporate structure when the primary objective of the firm changes or there is a definitive expansion of the firm and any other notable differences that would change the basis of the original SBE certification determination.

F. NAICS Code Change/Addition

1. SBE firms seeking to change, expand or add to the work (NAICS codes) that they are eligible to receive credit for as an SBE must submit a request in writing to RTD. The request must detail the specific nature of the change requested and be accompanied by documentation supporting the basis for the change. RTD shall have the final determination regarding NAICS code additions/modifications. SBE firms will be required to submit the following:
 - a. NAICS Code Addition Request Form;
 - b. For each additional NAICS code requested, supporting documentation of capability to provide the additional service/product must be provided:
 - i. Equipment;
 - ii. Licenses;
 - iii. Expertise.
2. Approval of request
 - a. If the request for additional NAICS code(s) is approved, the SBE Certification Specialist will:

- i. Prepare an updated certification letter;
 - ii. Email the original to the firm and put one copy in a file maintained by the Civil Rights Division; and
 - iii. Update the SBE directory.
- 3. Denial of request
 - a. If the request for additional NAICS codes is denied:
 - i. The Certification Specialist will prepare an Intent to Deny letter on behalf of the SBO Office Manager. The Intent to Deny letter will list the specific SBE eligibility requirements the applicant failed to meet, referencing the evidence in the record that supports each reason for the proposed denial of the request;
 - ii. The SBE Certification Specialist will send the Intent to Deny letter by certified mail;
 - iii. When RTD notifies an SBE firm that its request for additional NAICS codes is denied, it will give the firm an opportunity for an informal hearing, during which the firm may respond to the reasons for the proposed denial and provide information and any arguments concerning why it is eligible for the additional NAICS codes;
 - iv. Appeal requests must be made in writing no later than 30 days from the date of the Intent to Deny letter to:

RTD Small Business Opportunity Office
 1660 Blake St., BLK-31
 Denver, CO 80202
 SBO@rtd-denver.com

- v. In such a proceeding, the applicant bears the burden of proving that it meets certification standards cited in the Intent to Deny letter.
- vi. While the right is to an Informal hearing, the firm may submit its arguments in writing without attending the Informal Hearing, request that the Informal Hearing take place via teleconference or have the Hearing Officer base its decision on the written documents and oral statements/testimony.
- vii. The Informal Hearing will be conducted in an informally;
- viii. Notice of decision. RTD will provide the firm written notice of its decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision.
- ix. If the decision is to deny the request, the decision will be the final agency action, with no further appeal rights.

G. Procedures Governing Removal of SBE Eligibility

- 1. Administrative removal of SBE certification
 - a. RTD will apply an administrative removal to any certified SBE deemed non-responsive during the Annual Update process.

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- b. In the process of communicating with its certified firms, the SBE Certification Specialist will make every effort to contact or locate those firms by email, phone, fax and mail, if necessary.
- c. In administratively removing a firm's certification, RTD will remove a firm's eligibility for a period of no more than 12 months based on the firm's failure to respond.
 - i. Under extenuating circumstances and at RTD's sole discretion, a firm may be allowed to reapply before the end of the 12-month period.
- d. The administrative removal does not require a right of appeal or provide any opportunity for an Informal Hearing. Rather, the firm's non-responsiveness creates the presumption that the firm no longer desires to participate in the SBE Certification Program.
- e. RTD will treat a request by an SBE firm to withdraw its certification in a similar manner and administratively remove the firm. RTD will accept the written withdrawal request of a firm as final notice and immediately remove the firm from the SBE directory.

2. Revocation of SBE Certification

a. Ineligibility Complaints

- i. Any person may file a written complaint with RTD alleging that a currently-certified SBE firm is ineligible and specifying the alleged reasons why the firm is ineligible. The complaint should include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified.
- ii. RTD is not required to accept a general allegation that a firm is ineligible or an anonymous complaint.
- iii. RTD will keep the identity of the complainant confidential at their election. If confidentiality hinders the investigation, proceeding or hearing or results in denial of due process to other parties, the complainant will be advised for the purpose of waiving the privilege.
- iv. If an allegation of ineligibility is accepted, the Certification Specialist, SBO Office Manager and RTD Legal Services will review records and other material and may request further information and conduct any investigation deemed necessary.
- v. Where reasonable cause is established, RTD will notify the firm in writing that ineligibility proceedings have been initiated.
- vi. Ineligibility complaints must be submitted in writing to the following address:

RTD Small Business Opportunity Office
1660 Blake St., BLK-31
Denver, CO 80202
SBO@rtd-denver.com

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- b. RTD-initiated proceedings
 - i. If, based on information obtained from other agencies or RTD staff or project personnel that indicates a change in its circumstances or other information that gives reasonable cause to believe that a currently-certified SBE firm is ineligible, RTD will conduct a certification review to determine if such cause exists. Where reasonable cause is established, RTD will notify the firm in writing by certified mail that an eligibility review has been initiated. The notice will set forth the reasons for the review.
- c. Notification process
 - i. If, based on the review, RTD determines that the firm is ineligible, RTD will notify the firm that ineligibility proceedings have been initiated.
 - ii. The Certification Specialist will prepare an Intent to Revoke letter on behalf of the SBO Office Manager. The Intent to Revoke letter will list the specific eligibility requirements the SBE no longer meets, referencing the evidence in the record that supports each reason for the proposed revocation. The SBE Certification Specialist will send the letter by certified mail to notify the firm.
 - iii. When RTD notifies a firm of its intent to revoke SBE certification, it will give the firm an opportunity for an Informal Hearing, at which the firm may respond to the reasons for the proposal revocation and provide information and arguments concerning why it should remain certified.
 - iv. The SBE firm remains certified during the revocation process. RTD may collect evidence and generally investigate the continuing eligibility of the firm.
 - v. Appeal requests must be made in writing no later than 30 days from the date of the Intent to Revoke letter to:

RTD Small Business Opportunity Office
 1660 Blake St., BLK-31
 Denver, CO 80202
 SBO@rtd-denver.com

- vi. In such a proceeding, the RTD bears the burden of proving that the firm no longer meets the certification standards cited in the Intent to Revoke letter.
- vii. While the right is to an Informal Hearing, the firm may submit its arguments in writing without attending the Informal Hearing, request that the Informal Hearing take place via teleconference or have the Hearing Officer base its decision on the written documents and oral statements/testimony.
- viii. Should the SBE fail to exercise its right to a hearing or submit written arguments within 30 days of notification, the SBO Office Manager will render a final decision and notify the firm, in writing, of its decertification. RTD will immediately remove the firm's name from the SBE directory.
- ix. The SBE Certification Specialist will maintain a record of the date that the SBE firm was notified of the proposed decertification, process any requests for a

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hearing and promptly notify the Hearing Officer and any required personnel that participated in the decertification process.

d. Informal Hearing

- i. Once a hearing request or written arguments are received, the Hearing Officer will arrange for an Informal hearing or will convene an Informal Hearing within 30 days.
- ii. The Hearing Officer must not have previously taken part in the actions leading to the removal of the firm's eligibility or have any relationship with the parties to the proposed action.
 - (a) In the event the Director of Civil Rights is required to recuse themselves, which will occur in an action in which their impartiality or fairness may reasonably be questioned, the RTD Legal Department will designate a Hearing Officer.
- iii. The Informal Hearing will be conducted informally.

e. Final decision

- i. Notice of decision. RTD will provide the firm written notice of its decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision.
- ii. If the decision is to revoke certification, RTD will immediately remove the firm's name from the SBE directory. The decision will be the final agency action, with no further appeal rights.

3. Suspension of certification

- a. Under the following circumstances, RTD may immediately suspend an SBE's certification:
 - i. When there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the SBE firm to remain certified;
 - ii. When the SBE fails to notify RTD in writing of any material change in circumstances as required by III.B.4; or
 - iii. When RTD makes an adverse finding of an SBE's participation on one of its contracts.
- b. When a firm is suspended pursuant to paragraph a. of this section, RTD will immediately notify the SBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the SBE.

H. SBE Directory Procedures

1. The SBE directory will be updated monthly.
2. The SBE Certification Specialist will ensure the SBO external website is updated monthly.

I. Escalation Procedures

1. In the event that a firm needs to escalate a situation regarding certification, the Annual Update, Recertification or other SBE matters, they may reach out to the Small Business Opportunity Office Manager at 303-299-2111; select Option 1 for the Small Business Opportunity Office.

5. REFERENCES

A. Forms

1. New SBE Certification application packet
2. Annual Update Certification application packet
3. Recertification application packet
4. RTD individual personal financial statement
5. Change/No Change Affidavit
6. NAICS code change/addition

B. Letters

1. New certification/recertification letter
2. Annual update notification
3. Annual update letter
4. Recertification notification
5. Intent to deny
6. Denial
7. Bid code change/addition
8. Intent to revoke
9. Revocation

REVISION BLOCK

Draft prepared by:			
Name	Signature	Position	Date
Alexis Serrano-Castro		SBO Office Manager	2023-09-15
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