

Business Enterprise Certification Program



Policy & Procedure Manual

Revised October 27, 2010
(Effective January 1, 2011)

Table of Contents

Mission Statement of the South Central Texas Regional Certification Agency.....	3
Applicability and Purpose.....	3
South Central Texas Regional Certification Agency Responsibilities	3
Proprietary Disclosure	3
Applicant Affirmation/Confirmation	3
1.0 Definitions.....	4
1.01 Group Member(s).....	4
1.02 Certification Designations	5
1.03 General Terms.....	6
2.0 Eligibility Standards.....	9
3.0 Certification Policy	9
3.01 Procedures for Certification & Recertification	10
3.02 Rules that Govern Group Membership Determinations	11
3.03 Rules Governing Business Size Determinations.....	11
3.04 Rules that Govern Determinations of Ownership.....	12
3.05 Rules that Govern Determinations of Independence	14
3.06 Rules that Govern Determinations of Management.....	14
3.07 Rules that Govern Determinations of Position of Authority and Control	14
3.08 Rules that Govern Determinations of Expertise and Licensing.....	16
3.09 Rules that Govern Determinations of Change in Ownership or Control	17
3.10 Reciprocity	17
3.11 Rules Governing Certification	17
4.0 Certification Procedures.....	18
4.01 The Certification Process	18
4.02 Procedures for Certification Denials and Appeals.....	20
4.03 Recertification.....	21
4.04 Revocation	22
4.05 Certification Reviews.....	23
4.06 Site Visits	23

Mission Statement of the South Central Texas Regional Certification Agency

To increase participation of African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small, Veteran and Woman-owned business enterprises in their pursuit of contracting and procurement opportunities by providing centralized certification services.

Applicability and Purpose

The standards and procedures established in this manual are applicable to any request from a for profit business entity seeking certification.

The purpose of certification is to assist individuals who have experienced systemic or other forms of discrimination.

This certification is not to be confused with the Disadvantaged Business Enterprise (the “DBE”) program which is a federal program based upon Federal Law.

South Central Texas Regional Certification Agency Responsibilities

The Agency’s Board of Directors is ultimately responsible for ensuring that the Agency’s policies and applicable federal, state and local regulations are implemented and enforced. The Agency’s Executive Director is the operational manager responsible for the overall implementation, monitoring and reporting of the certification process. The Agency’s staff is assigned the responsibilities for the day-to-day implementation of the Agency’s Certification.

Proprietary Disclosure

The Agency will safeguard from disclosure, information that is covered by federal, state and local laws and regulations, and that reasonably may be regarded as confidential, personal and business information. Disclosure of information applicable to and provided as a result of Certification will only be with the owner’s advice and/or consent.

Applicant Affirmation/Confirmation

The Applicant is responsible for satisfying the requirements of the Application and/or Renewal Application process. The Applicant understands this to include the submission of a completed Application or Renewal Application and of any and all requisite information, documents or materials necessary for the South Central Texas Regional Certification Agency (SCTRCA) to review and assess the Application or Renewal Application. The Applicant acknowledges that Renewal Applications are required to be properly submitted within a particular timeframe, within sixty (60) days prior to certification expiration, and that failure to meet the renewal deadline will result in the Applicant losing its certification.

The Applicant is responsible for becoming familiar with the Application and/or Renewal Application process and understanding the jurisdiction of the SCTRCA, the geographical area within which the SCTRCA administers its certification program, as it relates to any possible fees and charges that may apply to Applicant in the Application and/or Renewal Application process. The Applicant accepts responsibility for any and all fees and charges reasonably incurred for services provided by the SCTRCA should the Applicant reside outside of the SCTRCA's jurisdiction.

1.0 Definitions

1.01 Group Member(s)

There are four ethnic categories into which group members may fall in accordance with the Small Business Administration's identifiers. (Small Business Act §2(f)(1)(A)(B)(C).) They are African Americans, Hispanic Americans, Asian Americans, and Native Americans legally residing in or that are citizens of the United States of America or its territories. Within these categories, the SCTRCA recognizes the following classifications:

African American: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian or West Indian.

Hispanic American: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central or South American origin.

Asian-Pacific American: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Asian-Indian American: Persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Maldives Islands, Bhutan, or Nepal.

Native American: Persons having no less than 1/16 percentage origin in any of the American Indian Tribes, as recognized by the United States Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents, to include persons who are Eskimos, Aleuts, or Native Hawaiians, for all SCTRCA purposes.¹

NOTE: The City of San Antonio does not recognize Eskimos, Aleuts or Native Hawaiians within its definition of Native American.

¹ A Native Hawaiian is any individual whose ancestors were natives prior to 1778 of what now comprises the State of Hawaii.

1.02 Certification Designations

AABE*	African American Business Enterprise: A business structure owned, operated and controlled by an African American minority group member(s) who has at least 51% ownership.
ABE*	Asian American Business Enterprise: A business structure owned, operated and controlled by an Asian American minority group member(s) who has at least 51% ownership.
DIBE	Disabled Individual Business Enterprise: A business structure that is at least 51% owned, operated and controlled by a Disabled individual against whom there is a recognized/demonstrated history of discrimination because of physical disability. Disabled individual means a person (a) with one or more disabilities as defined by the Americans with Disabilities Act (ADA) and amendments thereto (for purposes of applicability under the certification statutes, ordinances, rules and regulations governing the State of Texas), (b) having a record of such disabilities, and (c) regarded as having such disabilities.
ESBE*	Emerging Small Business Enterprise: An SBE eligible business structure for the purpose of making a profit, which is independently owned and operated by individuals legally residing in, or that are citizens of, the United States or its territories, whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and shall not be SCTRCA certified for more than five years from the date of its original South Central Texas Regional Certification Agency certification as an Emerging Small Business Enterprise.
HABE*	Hispanic American Business Enterprise: A business structure owned, operated and controlled by a Hispanic American minority group member(s) who has at least 51% ownership.
MBE	Minority Business Enterprise: A business structure owned, operated, and controlled by an ethnic minority group member(s) who has at least 51% ownership.
NABE*	Native American Business Enterprise: (1) A business structure owned, operated and controlled by a Native American minority group member(s) who has at least 51 percent ownership. The

Native American group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and legally residing in or are citizens of the United States or its territories; or (2) A business structure owned, operated and controlled by a Native American minority group member(s) who has at least 51% ownership and satisfies the Native American member status.

SBE* **Small Business Enterprise:** A business structure that is formed with the purpose of making a profit, which is independently owned and operated and which meets the United States Small Business Administration (SBA) size standard for a small business (see <http://sba.gov/size> click “table”).

VBE **Veteran-Owned Business Enterprise:** A business structure that is at least 51% owned, operated and controlled by an individual who served in the United States Armed Forces, and who was discharged or released under conditions other than dishonorable. ***NOTE: This certification type should not be confused with the Service Disabled Veteran designation available through the Small Business Administration.***

WBE* **Woman-owned Business Enterprise:** A business structure that is owned, operated and controlled by one or more women who have a total of at least 51% or more ownership.

*** NOTE:** **APPLICANTS SEEKING CERTIFICATION RECOGNITION FROM A MEMBER ENTITY MUST SATISFY ALL OF THAT MEMBER ENTITY’S REQUIREMENTS PURSUANT TO MEMBER ENTITY POLICY.**

1.03 General Terms

AAC The South Central Texas Regional Certification Agency Board of Directors’ Appeal Advisory Committee.

Agency The South Central Texas Regional Certification Agency.

Appeal A process by which the certification eligibility decision made by the South Central Texas Regional Certification Agency is reviewed.

Applicant	One who submits a certification Application or Renewal Application to the South Central Texas Regional Certification Agency for Certification.
Application	Document required in making a request for Certification.
Board	The Agency's Board of Directors composed of representatives from each of the member entities.
Business Day	Any day other than (i) a Saturday or a Sunday, or (ii) a legal holiday or the equivalent of which certifying institutions generally are authorized or required to close.
Business Structure	A sole proprietorship, partnership or corporation as defined by its assumed name certificate, articles of formation, articles of incorporation, certificate of formation, operating agreement, and/or partnership agreement.
Certification	The process by which a firm is reviewed for eligibility to be certified as an African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small, Veteran and Woman-owned business enterprise by the South Central Texas Regional Certification Agency.
Certification Review	A part of the certification process where the South Central Texas Regional Certification Agency verifies the information submitted by a business is accurate and the business owner meets all the eligibility requirements in order to be certified as an African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Veteran or Woman-owned business enterprise.
Challenge	A formal filing by a third party to rebut the presumption that a particular individual is an African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small, Veteran and Woman-owned business enterprise.
Control	Primary power to direct the management of a business enterprise; specifically, the party must possess the power and ability to direct or cause the direction of the management and policies of the firm to make the day-to-day, as well as major decisions on matters of management, policy and operations.

Corporation	A separate legal entity incorporated under the authority of federal or state laws, apart from the individuals that may own or manage it.
De-Certification	The removal of a certified status from a firm as a result of the firm's ineligibility.
Expertise	Demonstrated skills, knowledge or ability to perform in the field of endeavor in which certification is sought by the business enterprise as defined by normal industry practices.
Immediate Family Member	Any relative that can be considered a father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.
Jurisdiction	The geographical area in which the SCTRCA administers its certification program, including the following counties: Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina and Wilson, as may be further delineated from time to time. The SCTRCA also provides certification services to a limited extent, in other counties to include Caldwell, Goliad, Gonzales, Hays, Karnes and Uvalde counties, as may be determined from time to time.
Management	To direct or carry on daily business affairs; to make and keep business enterprise compliant.
Member Entity	Any qualified entity under the Interlocal Cooperation Act which (1) has applied and been approved by the Board of Directors of the South Central Texas Regional Certification Agency, (2) has entered into and executed an Interlocal Agreement with the Agency, and (3) has contributed its annual fee as stipulated in said Interlocal Agreement, towards the operating budget of the Agency.
Ownership	Having at least 51% of the issued stock holdings, partnership interest and must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form of arrangements.
Partnership	An association of two or more persons who function as co-owners of a business.

Professional Services	The consulting, designing, advising or conducting of services in any of the areas of academia such as architecture, engineering, accounting, economics, law, medicine, etc.
Renewal Application	Document required to be completed for processing renewal certification(s).
Revocation	De-certification. The removal of a certified status from a firm as a result of the firm's ineligibility.
SBA	Small Business Administration.
SCTRCA	The South Central Texas Regional Certification Agency.
Site Visit	An onsite visit of a certified business conducted by the South Central Texas Regional Certification Agency at anytime without prior notification for the purpose of verifying its certified business status.
Sole Proprietorship	A business in which one person owns 100% of assets of the business and is solely liable for all debts of the business.

2.0 Eligibility Standards

At a minimum, the following standards will be used by the Agency as part of Certification. Owners must be permanent residents or naturalized citizens of the United States or its territories. The process will be used in determining whether a firm is a small business concern, or owned and controlled by one or more minorities, African American, Asian American, Disabled Individuals, Hispanic American, Native American, Women and/or Veterans to determine eligibility as an African American Business Enterprise (AABE), Asian American Business Enterprise (ABE), Disabled Individual Business Enterprise (DIBE), Emerging Small Business Enterprise (ESBE), Hispanic American Business Enterprise (HABE), Minority Business Enterprise (MBE), Native American Business Enterprise (NABE), Small Business Enterprise (SBE), Veteran-owned Business Enterprise (VBE) or Woman-owned Business Enterprise (WBE). A certified firm is one that has met **ALL** eligibility standards for the respective Certification Designation.

3.0 Certification Policy

This policy addresses Certification within the following counties: Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina and Wilson. The SCTRCA also provides certification services in Caldwell, Goliad, Gonzales, Hays, Karnes and Uvalde counties to a limited extent.

3.01 Procedures for Certification & Recertification

A. Allocation of Burdens of Proof

1. The SCTRCA has adopted the same standard of review as 49 CFR 26.61, as amended, in that when determining whether to certify a firm as eligible for certification as an African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small, Veteran and Woman-owned business enterprise, the firm seeking certification has the burden of demonstrating to the Agency, by a preponderance of evidence, that it meets the requirements or standards concerning group membership, business size, ownership, management and control.
2. Acceptable forms of identification for meeting the burden of proof requirements are as follows:

B. Required Documentation

1. Completed Application for Certification;
2. Proof of Ethnicity/Citizenship (see Rules that govern group membership determinations);
3. Assumed Name Document (Doing Business As – DBA);
4. Franchise Agreement (as applicable)
5. Any applicable licenses or certificates, as required by law;
6. Income tax returns, business and personal, for the last three years;
7. Year-end balance sheets and income statements for the past three years and for a new business, a current balance sheet;
8. Last two Quarterly TWC Reports (firms whose size standards are based on the number of employees);
9. Résumé(s) of owner(s) and key employee(s);
10. Documentation from medical Doctor or government agency verifying disability; and
11. Document DD-214 from the Department of Defense verifying military service.

C. Applicable Based on Business Structure

1. Sole Proprietorship;
2. Limited Liability Corporation;
3. Partnership (Limited Partnership, Limited Liability Partnership);
4. Corporation; or
5. General Partnership.

D. Additional documentation

Additional documentation may be required during the application review process. Such additional documents may include but not be limited to invoices, and cancelled checks.

3.02 Rules that Govern Group Membership Determinations

A. If the Agency has a reason to question whether an individual is a member of a group that is presumed protected, it must require the individual to submit evidence, that he or she is a member of said group.

B. In making such a determination, the Agency may require and the Applicant shall produce appropriate documentation of group membership.

C. Acceptable forms of appropriate and valid documentation regarding group membership are as follows:

1. Birth Certificate;
2. Permanent Alien Resident Card;
3. Certificate of Naturalization;
4. Current U.S. Passport;
5. Valid Driver's License / State Issued ID Card (for identification verification only);
6. Tribal Card; or
7. Commonly Recognized Religious Record.

The decisions concerning membership in a designated group are subject to the certification appeals procedures.

3.03 Rules Governing Business Size Determinations

A. To be an eligible Small Business Enterprise (SBE) firm, including its affiliates, a firm must be a small business, as defined by the Small Business Administration (SBA). The Agency must apply the appropriate, current size standard to the type of work the firm seeks to perform. The firm is not an eligible SBE if the firm, including its affiliates, has had average annual gross receipts over the firm's previous three fiscal years, in excess of the current year SBA standard.

To be an eligible Emerging Small (ESBE) firm, including its affiliates, a firm shall not be SCTRCA certified for more than five years as an Emerging Small Business Enterprise, and whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration.

B. The Agency may require and the Applicant shall produce appropriate documentation demonstrating business size.

C. Forms of appropriate documentation regarding business size are:

1. Income tax returns, business and personal, for the last three years;
2. Year-end balance sheets and income statements for the past three years and for a new business, a current balance sheet; or
3. Last two Quarterly TWC Reports (firms whose size standards are based on the number of employees).

3.04 Rules that Govern Determinations of Ownership

The SCTRCA must consider all facts in the record, viewed as a whole, in determining whether the individual(s) in a firm own(s) the firm. To be an eligible African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small, Veteran and Woman-owned business enterprise, a firm must be at least 51% owned by an African American, Asian American, Disabled Individual, Hispanic American, Minority, Native American, Veteran or Woman.

The firm's Ownership by an African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran and/or Woman must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner(s) must enjoy customary incidents of Ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form of arrangements. In making such a determination, the Agency may require and the Applicant shall produce appropriate documentation of group membership to include personal financial statements.

- A. In the case of a corporation, such individual(s) must own at least 51% of each class of voting stock.
- B. In the case of a partnership, the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner must own 51% of each class of partnership interest. Such ownership must be reflected in the firm's partnership agreement.
- C. In the case of a limited liability corporation, the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner must own 51% of each class of member interest.

All securities that constitute Ownership of a firm shall be held directly by the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman. The SCTRCA may consider all the factors identified in Section 3.04 in determining the Ownership of a firm. However, a contribution of capital alone will not be regarded as failing to be real or substantial, and a firm will not be ineligible, solely because:

An African American, Asian American, Disabled Individual, Hispanic American, Minority, Native American, Small Business, Veteran or Woman acquired his or her ownership interest as the result of a gift, or a transfer without adequate consideration.

However, the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner must demonstrate operational control as well as technical and managerial expertise.

Required documentation regarding Ownership includes the following:

- Résumé of Owner(s) (applicable to all business structures)
- Assumed Name Certificate (Doing Business As – DBA) (applicable to all business structures)
- Franchise Agreement (as applicable)

Sole Proprietorship/General Partnership	Assumed Name Certificate
Limited Liability Corporation	Certificate of Formation/Operating Agreement
Partnership, LTD, LLP	Certificate of Formation/Assumed Name Certificate/Partnership/Operating Agreement
Corporation	Certificate of Formation/Organization
	Articles of Incorporation
	By-Laws
	Minutes of first organizational and last annual meeting
	Minutes of all meetings showing ownership changes
	Stock Certificates Issued/Stock Ledger

It is the ultimate responsibility of the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman-owned business owner(s) to notify the SCTRCA if a change of Ownership, Control or Management occurs. De-certification is automatic if a certified African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small, Veteran or Woman-owned business enterprise has a change in Ownership, Control or Management and does not inform the Agency within 30 days of said change.

3.05 Rules that Govern Determinations of Independence

An independent business is one in which the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman does not depend on its relationship with another firm or firms for the potential success of the firm. The Agency will consider relationships with non-disabled individual, non-Veteran, non-minority or woman-owned firms and individual(s), employee contracts, prime contractors and normal industry practices.

The Agency reviews the relationship between the Franchiser/Licenser and Franchisee/Licensee and that there is no affiliation between the two, to identify whether independence issues exist.

Forms of appropriate documentation regarding independence are as follows:

1. Résumé of Owner(s) and Key Employees;
2. List of Equipment;
3. Lease agreements: rental or equipment; or
4. Copy of invoice(s)/purchase order(s).

3.06 Rules that Govern Determinations of Management

An African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner(s) must not be subject to any informal or formal restriction(s) which limits the effectiveness or normal discretion of the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner(s).

Form of appropriate documentation regarding Management: Résumé of Owner(s).

3.07 Rules that Govern Determinations of Position of Authority and Control

The African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner(s) must possess the authority to direct or cause the direction of the management and policies of the firm and to make day-to-day decisions on management, policy and operations. They must hold the highest position of Control in the firm.

Non-minorities, non-disabled individuals, non-Veterans or males may be involved in the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman-owned firm as owners, managers, employees, stockholders, directors and/or officers; however, they must not possess the power to Control the firm or be disproportionately responsible for the operation of the firm.

The African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner(s) must retain the authority to hire and fire person(s) in management positions. The African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner's role in the overall affairs of the firm must be such that the Agency can reasonably conclude that the owner actually exercises Control over the firm's Management, policies, and operations.

The African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner(s) may have one or more of their Immediate Family Members involved in the firm who are not African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman, who participate in the firm as a manager, employee, owner, or in another capacity. The Agency must be able to distinguish the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman Control of the firm and have proof concerning Control even if the other family member contributes significantly in the firm's activities.

The SCTRCA has also adopted the same standard of review as 49 CFR 26.71, as amended, where, if a firm was formerly owned and/or controlled by a non-disadvantaged individual/unqualified individual, whether or not an Immediate Family Member, and Ownership and/or Control were transferred to a disadvantaged individual/unqualified individual, and the non-disadvantaged individual/unqualified individual remains involved with the firm in any capacity, then the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman now owning the firm must demonstrate to the Agency, by clear and convincing evidence, that:

The transfer of ownership and/or control to the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman was made for reasons other than obtaining certification as a African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman-owned business enterprise; and that the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman actually controls the management, policy and operations of the firm, notwithstanding the continuing participation of the non-minority, non-disabled individual, non-Veteran or male who formerly owned and/or controlled the firm.

In order to be viewed as controlling a firm, an African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business,

Veteran or Woman owner cannot engage in outside employment or other business interests that conflict with the Management of the firm; the employment shall not prevent the individual from devoting sufficient time and attention to the affairs of the firm to Control its activities. *For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.*

With respect to Partnerships, the Agency must identify any written authority for a non-disabled individual, non-minority, non-Veteran or male to contractually bind and subject the firm to legal liability.

The Agency can only grant Certification to firms for specific types of work in which the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman demonstrate the ability to Control.

Forms of appropriate documentation regarding position of authority and Control are as follows:

Résumé of Owner(s) and Key Employees

Applicable depending on company structure

Articles of Incorporation

By-Laws

Regulations or Operating Agreement

Partnership Agreement

Franchise Agreement

Resolution for purchase of equipment or to execute contracts

It is the ultimate responsibility of the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman-owned business owner(s) to notify the SCTRCA if a change of Ownership, Control or Management occurs. De-certification is automatic if a certified African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman-owned business enterprise has a change in Ownership, Control or Management and does not inform the Agency within 30 days of said change.

3.08 Rules that Govern Determinations of Expertise and Licensing

The African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner(s) must display overall understanding of, and managerial/technical competence and or experience directly related to, the primary type of business in which the firm is engaged and for which it is requesting certification. The African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman

owner(s) must be able to comfortably scrutinize and evaluate information given by any officer/subordinate to make independent decisions for the firm.

If the local or state law requires that a business enterprise be licensed in order to perform a certain type of work (i.e., legal, medical, engineering, CPA, etc.), then the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner must possess themselves a license or employ a licensed individual to legally perform the work requested.

The lack of an African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman owner(s) actually possessing the license in their name, is not solely a reason to deny eligibility, but it can be used as a factor in overall review of the Applicant's ability to exercise Control.

Forms of appropriate documentation regarding Expertise and licensing are as follows:

Résumé of Owner(s) and Key Employees
Copies of Licenses or Certification Required by Law

3.09 Rules that Govern Determinations of Change in Ownership or Control

It is the ultimate responsibility of the African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman-owned business owner(s) to notify the SCTRCA if a change of ownership occurs. Revocation is automatic if a certified African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman-owned business enterprise has a change in Ownership, Control or Management and does not inform the Agency within 30 days of said change.

3.10 Reciprocity

Reciprocity will be granted to Applicants certified by the Texas Unified Certification Program (the "TUCP") who provide evidence of current TUCP certification.

3.11 Rules Governing Certification

A. Applicants residing within the jurisdiction of the SCTRCA may streamline and make more efficient the certification process of their Application by providing evidence of their current certification issued by the following certification entities:

- Southwest Minority Supplier Development Council;
- Texas Comptroller of Public Accounts; Historically Underutilized Business;
- Small Business Administration Section 8(a); and
- Women's Business Enterprise Alliance.

- B. Applicants residing outside of the SCTRCA jurisdiction are strongly encouraged to seek certification in their residence or through the TUCP. TUCP certifying agencies are:

- Texas Department of Transportation;
- City of Houston;
- City of Austin;
- Corpus Christi Regional Transit Authority; and
- North Central Texas Regional Certification Agency.

The SCTRCA will process Applications submitted by Applicants residing outside the SCTRCA jurisdiction.

The SCTRCA will charge fees for any and all certification reviews made outside the jurisdiction during the certification process regardless of whether Applicant becomes certified. The SCTRCA will also charge certified businesses outside the SCTRCA's jurisdiction fees for any and all site visits. The SCTRCA is a non-profit agency, therefore, extraordinary expenses for providing certification services beyond its jurisdiction must be recaptured. Charges will be incurred at the expense of the Applicant or certified business for actual costs incurred by the SCTRCA. Such charges include but are not limited to mileage, travel, lodging and per diem.

4.0 Certification Procedures

This process is for new Applications. There are additional procedures that must be followed for recertification which are detailed below.

4.01 The Certification Process

- A. A business seeking certification as an African American, Asian American, Disabled Individual, Hispanic American, Minority, Native American, Small Business, Veteran or Woman-owned business enterprise must submit a completed Application to the SCTRCA.
- B. The African American, Asian American, Disabled Individual, Hispanic American, Minority, Native American, Small Business, Veteran or Woman-owned Applicant(s) must provide the requisite materials and information necessary to demonstrate that the firm is an independent business. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
- C. The following documentation is required as applicable to the Certifications applied for based upon the Applicant's business structure:

1. Completed Application for Certification;
2. Proof of Ethnicity/Citizenship (see Rules that govern group membership determinations);
3. Assumed Name Document (Doing Business As – DBA) (as applicable);
4. Any applicable licenses or certificates, as required by law;
5. Income tax returns, business and personal, for the last three years;
6. Year-end balance sheets and income statements for the past three years and for a new business, a current balance sheet;
7. Last two Quarterly TWC Reports (firms whose size standards are based on the number of employees);
8. Résumé (s) of owner(s) and key employee(s);
9. Documentation from medical Doctor or government agency verifying disability;
10. Document DD-214 from the Department of Defense verifying military service; and
11. Corporate Documents (See the table below).

Sole Proprietorship/General Partnership	Assumed Name Certificate
Limited Liability Corporation	Certificate of Formation/Operating Agreement
Franchise	Franchise Agreement
Partnership, LTD, LLP	Certificate of Formation/Assumed Name Certificate/Partnership/Operating Agreement
Corporation	Certificate of Formation/Organization
	Articles of Incorporation
	By-Laws
	Minutes of first organizational and last annual meeting
	Minutes of all meetings showing ownership changes
	Stock Certificates Issued/Stock Ledger

- D. SCTRCA will certify the Applicant as an African American, Asian American, Disabled Individual, Hispanic American, Minority, Native American, Small Business, Veteran or Woman-owned business enterprise or provide the Applicant with written justification of its denial of certification within 60 days after the date SCTRCA receives a satisfactorily completed Application and supporting documentation from the Applicant.
- E. SCTRCA’s staff will review and evaluate Applications, and may reject an Application based on one or more of the following reasons:

1. the Application is incomplete;
2. the Applicant does not meet the requirements of the definition of an African American, Asian American, Disabled Individual, Hispanic American, Minority, Native American, Small Business, Veteran or Woman business enterprise;
3. the Application contains information that cannot be verified; or
4. the Applicant does not provide additional information in connection with the Certification Review as requested by SCTRCA.

4.02 Procedures for Certification Denials and Appeals

The procedures upon denial of certification for reconsideration on appeal are also applicable to denials of recertification. The procedures used for each are the same.

- A. The SCTRCA shall send by certified, registered mail, return receipt requested, by Federal Express or a comparable bona fide overnight courier, for delivery on the next business day with all postage and/or charges paid by sender, with signature required, a letter of “Intent to Deny” certification detailing the areas of concern regarding the Applicant’s Application or Renewal Application.
- B. The Applicant may protest the decision in writing within 15 business days of the date the “Intent to Deny” letter is received. The Applicant may also include additional documentation to be reviewed by the SCTRCA Certification Specialist and Executive Director. The SCTRCA Executive Director shall hold an informal hearing to include the Certification Specialist, Executive Director and Applicant to reconsider the decision within 15 business days of receipt of the protest.

Applicants who wish to respond to an “Intent to Deny” letter seeking further reconsideration regarding eligibility and are outside of the SCTRCA’s jurisdiction, agree to accept and be responsible for any and all additional fees charged by the SCTRCA for any and all certification reviews conducted during this certification process. If an Applicant outside of the jurisdiction does not agree to pay the additional fees, the Applicant still has the option of participating in the informal hearing. The determination of eligibility will consequently be limited to the information previously presented and whatever additional information is presented at the informal hearing.

- C. The SCTRCA Executive Director’s final decision and the basis therefore shall be communicated to the Applicant within 10 business days of the hearing or on a date set by agreement due to extraordinary circumstances. Within 10 business days of receiving the SCTRCA Executive Director’s written notice of final decision, the Applicant may file with the SCTRCA Executive Director a protest requesting in writing an audience before the SCTRCA Board of Directors’ Appeal Advisory Committee (referred herein after as “AAC”) to appeal the Executive Director’s decision.

- D. A member of the AAC or its designated representative will contact the Applicant by telephone and/or e-mail to schedule a date, time and location to hear the protest. The decision of the AAC to either certify or to uphold the denial shall be communicated to the SCTRCA Executive Director within 10 business days of the hearing or on a date set by agreement due to extraordinary circumstances and shall be final.
- E. The SCTRCA will notify the Applicant in writing of the AAC's decision within two (2) business days of receiving the AAC decision.
- F. An Applicant denied certification or recertification may not apply for certification for six (6) months from the effective date of final decision.

4.03 Recertification

- A. The African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman-owned certification is valid for a **two-year period** beginning on the date SCTRCA certifies the Applicant.

In order to avoid certification expiration of the **two-year period**, a business that desires to maintain its certification by being recertified must:

- 1. Return a completed Renewal Application as provided by SCTRCA within 60 days prior to expiration; and
- 2. Comply with the requirements specified in these standards and procedures as to Certification.

B. Recertification Closing Procedures

Should the Applicant fail to provide the Renewal Application, should the form received be incomplete or without the requested additional documentation, or should there be outstanding requests for additional information to complete the recertification process, the Applicant will be subjected to Recertification Closing Procedures.

- 1. Renewal Application not submitted by Applicant
 - a. SCTRCA staff shall send one lapse letter by email and fax after the 60 day renewal notice has expired informing the Applicant of the potential close of the Applicant's file.
 - b. Ten (10) business days after notifying the Applicant by email and fax of a potential close, the SCTRCA staff shall provide a reminder call to the Applicant within the same 10 business day period.

- c. SCTRCA staff shall notify Applicant in writing of file closure and removal of Applicant from the certified vendor database on the 15th day of the following month of which the certification has expired. The close notification or Close Letter shall clearly indicate the Applicant's inability to apply for certification for six (6) months from the date of the Close Letter. Firms seeking certification shall cooperate fully with the requests of the SCTRCA for information relevant to Certification. Failure or refusal to provide such required or requested information is grounds for a denial or revocation of certification.
2. Renewal Application received from Applicant incomplete
 - a. Walk in applications that are incomplete will not be accepted.
 - b. SCTRCA staff will contact Applicant by phone with an initial request for additional information (RFAI) and will follow up by fax and/or email. A response to the initial request is due within 10 days of receipt of the notification.
 - c. SCTRCA staff will send a second and third RFAI by fax, and email or phone as a last resort, giving the Applicant 10 additional days per each request to submit additional information.
 - d. Executive Director will send a final Close Letter informing the Applicant that their request for recertification has been closed and they are not eligible to apply for certification for six (6) months from the date of the Close Letter. Firms seeking certification shall cooperate fully with the requests of the SCTRCA for information relevant to the certification process. Failure or refusal to provide such information is grounds for a denial or revocation of certification.

4.04 Revocation

SCTRCA shall revoke the certification of a business if it is determined that a business does not meet the definition of a African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Small Business, Veteran or Woman-owned business enterprise or that the business fails to provide information requested in connection with a Certification Review conducted by SCTRCA. Prior to taking final action, SCTRCA staff shall provide the firm with written notice of the proposed Revocation. SCTRCA staff shall then prepare a recommendation regarding the proposed Revocation and submit the recommendation to the Executive Director for a determination. An appeal, if requested, will be forwarded to the AAC for a final determination.

4.05 Certification Reviews

During Certification, the SCTRCA may conduct Certification Reviews as part of Certification to ensure the information received by a business is accurate, and the business owner meets all the eligibility requirements in order for the business to be certified as an African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Veteran or Woman-owned business enterprise.

Certification may be denied if it is determined that a business does not qualify as an African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Veteran or Woman-owned business enterprise. Instances which may lead to a Certification Review include but are not limited to:

1. Misrepresentation or falsification of Application or Renewal Application and/or supporting documents;
2. Non-Compliance with the SMWBE Policies & Procedures resulting in a denial of certification or recertification;
3. Certification Review request by a SCTRCA Board of Directors or Member Entity; and
4. Challenge of certification by an outside party.

Businesses subject to Certification Reviews must provide SCTRCA with any information requested to verify the certification eligibility of the business. Failure to provide requested information is grounds for denial of certification.

The SCTRCA may interview the principal owner(s)/officer(s) of the firm. The SCTRCA has authority to perform a Certification Review at job sites if there are such sites on which the firm is working at the time of the eligibility investigation.

The SCTRCA will charge Applicants residing outside of the SCTRCA jurisdiction fees for any and all Certification Reviews made during Certification regardless of whether Applicant becomes certified. The SCTRCA is a non-profit agency, therefore, extraordinary expenses for providing certification services beyond its jurisdiction must be recaptured. Charges will be incurred at the expense of the Applicant for actual costs incurred by the SCTRCA. Such charges include but are not limited to mileage, travel, lodging and per diem as calculated at the current Federal Transportation Rates.

4.06 Site Visits

Certified Firms may be selected for random site visits by the SCTRCA. Firms are randomly selected by the Executive Director and the site visits may be conducted at any time. Prior notification is not required.

SCTRCA may conduct Site Visits of certified businesses auditing them to verify that the information submitted by a business is accurate, and that the business remains eligible for certification. Certification is subject to Revocation if it is determined that a business is no longer qualified as a SCTRCA African American, Asian American, Disabled Individual, Emerging Small, Hispanic American, Minority, Native American, Veteran or Woman-owned business enterprise as identified in these policies and procedures. Site Visits may be conducted for any business for which SCTRCA determines a Certification Review is warranted.

Additionally, Board Members may request the audit of a certified business' file, by submitting a formal written notice to the Executive Director stating the reasons (i.e. eligibility, open records request, challenge) for the requested audit detailed.

Instances which may lead to a Site Visit include but are not limited to:

1. Misrepresentation or falsification of Application or Renewal Application and/or supporting documents;
2. Non-Compliance with the SMWBE Policies & Procedures resulting in a denial of certification or recertification;
3. Certification Review request by a SCTRCA Board of Directors or Member Entity; and
4. Challenge of certification by an outside party.

Businesses subject to Site Visits must provide SCTRCA with any information requested to verify the certification eligibility of the business. Failure to provide requested information is grounds for denial of certification.

The SCTRCA will charge certified businesses residing outside of the SCTRCA jurisdiction fees for any and all Site Visits made during any and all Site Visits. The SCTRCA is a non-profit agency, therefore, extraordinary expenses for providing and maintaining certification beyond its jurisdiction must be recaptured. Charges will be incurred at the expense of the certified business for actual costs incurred by the SCTRCA. Such charges include but are not limited to mileage, travel, lodging and per diem as calculated at the current Federal Transportation Rates.