



OPERATIONAL SERVICES DIVISION
SUPPLIER DIVERSITY OFFICE

THE COMMONWEALTH OF MASSACHUSETTS
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Memorandum

To: All Public Awarding Authorities
From: Bill McAvoy, Deputy Assistant Secretary for Supplier Diversity and Chief Legal Counsel
Supplier Diversity Office of the Operational Services Division
Date: April 21, 2016
Re: MBE Certification Status of Portuguese-Owned Businesses

The purpose of this memorandum is to inform you that, effective April 12, 2016, all Portuguese-owned Minority Business Enterprises (MBEs), as certified by the Supplier Diversity Office (SDO), will no longer be considered MBEs but will instead be considered Portuguese Business Enterprises (PBEs). This change complies with an order of the Superior Court of the Commonwealth of Massachusetts in a case entitled Federal Concrete, Inc. v. Executive Office of Administrative & Finance et al., No. 1684CV00627. The change also complies with the language of SDO's current regulation.

The SDO's current regulations, 425 C.M.R. § 2.02, define "Portuguese" for purposes of certification as follows: "All persons having Portuguese origin. Portuguese persons shall only be included in the definition of minority if specifically set forth in programs funded by state transportation bond statutes which include such persons as eligible participants." As such, PBEs shall be eligible for participation in programs funded by state transportation bond statutes where such statutes include Portuguese businesses as eligible participants.

SDO has posted notice of this change on our website at www.mass.gov/sdo. We have also removed Portuguese-owned businesses from our certification database and lists of eligible MBEs. Later this week we will add such businesses back onto our certification database and lists, but as PBEs instead of MBEs. We will also inform the Portuguese-owned firms impacted by this change.

Awarding authorities are hereby advised that, for any bids submitted by a prime bidder after April 12, 2016, the SDO will not recognize, and the awarding authority should not recognize, an MBE certification issued to a Portuguese-owned firm. (In contrast, if the bid was submitted by the prime bidder to the Awarding Authority on or before April 12, 2016, any Portuguese-owned businesses included as MBEs on the prime bidder's list of MBE subcontractors may remain on that list and count toward the project's M/WBE participation goal.) Any bids submitted after April 12 may not count Portuguese-owned businesses toward the contract's M/WBE participation goals, unless PBE participation is permitted in the project as stated in the SDO regulation. If any Awarding Authority or prime bidder is unsure as to the current MBE or PBE status of a particular subcontractor, we encourage you to visit our website, as our records will be updated by the end of this week to reflect this change.

Recipients of this memo should feel free to forward this to other interested parties. If you have any questions about this change or about bids submitted after April 12, 2016, please feel free to contact our office at john.b.fitzpatrick@state.ma.us.