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Articles of Note

Certification of Your Business as a Tool for Success

by Diane S. Davis



Becoming certified as a minority business, woman owned business, or disadvantaged business enterprise through various agencies on the federal, state and local levels has many advantages. Once a business obtains certification, the benefits to both the business and the business owners include preferential consideration for federal, state and local contracts; funding opportunities through grants and loans; marketing programs; and business development programs. Although the benefits to obtaining certification are apparent, the certification process is detailed and requires careful consideration and attention to detail. Below is a discussion of the various types of certification and the organizations that offer certification, as well as an overview of the certification process and the supporting documentation required for a business owner's application for certification.

Minority Certification

Federal, state, and local governments, as well as corporations, continually express an interest in establishing business relationships with minority-owned businesses. In order to identify those businesses that can meet their business objectives, governments and corporations often look to programs that are involved in the formal certification of a minority owned business. The National Minority Supplier Development Council ("NMSDC") is an organization that includes corporate members such as Exxon Mobil Corporation, Microsoft Corporation, and Wells Fargo & Company. NMSDC 2014 Corporate Members, <http://www.nmsdc.org/corporate-membership/corporate-members> (last visited August 6, 2014). The organization identifies itself as a global leader in the certification of Asian, Black, and Native American-owned businesses. The objective of this organization is to provide networking opportunities and access between its corporate members and the minority owned business enterprises that are currently identified in NMSDC's database. NMSDC MBE Membership, <http://www.nmsdc.org/mbe-membership> (last visited August 6, 2014). Any for-profit business of any size located in the United States that is owned, operated, and controlled by U.S. citizens who are also members of a minority group can apply for certification as a minority owned business enterprise through the NMSDC. Sarah Kessler, *How to Get Certified as a Minority Owned Business, Inc.*, May 19, 2010, available at <http://www.inc.com/guides/2010/05/minority-owned-business-certification.html>. The NMSDC identifies a minority group member as any U.S. citizen whose heritage is at least 25 percent Asian-Indian, Asian-Pacific, Black, Hispanic, or Native American. The NMSDC requires documentation to support the representation of an individual's minority status. Further, at least 51 percent of the enterprise's stock must be owned by members of a minority group. In addition, members of a minority group as defined by the NMSDC must also control the management and operations of the enterprise.

In order to apply for this certification as a minority-owned business by the NMSDC, an interested individual should contact one of the 37 regional councils of the NMSDC for a standardized application to complete. Later, a representative of the NMSDC will follow up with a site visit. The costs of certification as a minority-owned business are in the range of \$350-\$1200, but the application fee is non-refundable. If the application for certification is denied, a company can appeal within 30 days. If the company is not successful with this appeal, the company must wait one year before reapplying for certification. Certification must be renewed annually with the payment of an annual fee.

Small Business Certification

Several government agencies mandate that a certain percentage of their contracts are allocated to small businesses. The Small Business Administration's ("SBA") Office of Government Contracting and Business Development has worked with various agencies to ensure that at least 23 percent of prime government contract funds are awarded to small businesses. *Getting Started: SBA's Role in Government Contracting*, Small Business Administration, <http://www.sba.gov/content/sbas-role-government-contracting> (last visited August 6, 2014). Since 2008, the SBA has allowed businesses to represent themselves

as small disadvantaged businesses (“SDB”) without any formal application to the SBA. *Contracting Support for Small Businesses: Small Disadvantaged Businesses*, Small Business Administration, <http://www.sba.gov/content/disadvantaged-businesses> (last visited August 6, 2014). The Social Security Administration defines a SDB as a for-profit small business when (1) at least fifty-one percent of the business is owned by one or more individuals who are both socially and economically disadvantaged or at least fifty-one percent of the stock is owned by one or more such individuals; and (2) the management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it.

Prior to bidding for certain government contracts, the small business must register as a vendor and provide information about the company in the System for Award Management (SAM) database. *Getting Started: Am I a Small Business*, Small Business Administration, <http://www.sba.gov/content/am-i-small-business-concern> (last visited August 6, 2014). Although a company can certify itself as a small business, it still must meet the SBA’s definition of a small business. This determination is based on the number of the company’s employees during the previous year or the company’s average annual receipts over the past three years. The size standards differ among various industries.

DBE Business Development and Certification

In order to provide additional resources to Disadvantaged Business Enterprises (“DBE”), the SBA also implemented the 8(a) Business Development Program, a program that provides necessary guidance and assistance to DBE’s that allow the business to compete effectively in the marketplace. Socially and economically disadvantaged individuals must control at least fifty-one percent of the business. *About the 8(A) Business Development Program*, Small Business Administration, <http://www.sba.gov/content/about-8a-business-development-program> (last visited August 6, 2014). The designation of “socially disadvantaged” refers to those individuals who have incurred racial or ethnic prejudice because of their identification as a member of an ethnic group, including but not limited to people who identify as African American, Hispanic, Asian Pacific, Subcontinent Asian, and Native American. *Eligibility Requirements: Social Disadvantage Eligibility*, Small Business Administration, <http://www.sba.gov/content/social-disadvantage-eligibility> (last visited August 6, 2014). African Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, and Native Americans are presumed to be socially disadvantaged when they hold themselves to be members of a presumed group and others identify them as members of a presumed group. An “economically disadvantaged” person is identified by the SBA as an individual whose ability to compete has been impaired as a result of diminished capital and credit. In order to prove economic disadvantage, the individual must provide a narrative statement of their economic disadvantage and personal financial information such as tax forms and applicable SBA forms. *Eligibility Requirements: Economic Disadvantage Eligibility*, Small Business Administration, <http://www.sba.gov/content/economic-disadvantage-eligibility> (last visited August 6, 2014).

In order to apply, an individual should obtain official copies of all governing documents such as licenses, articles, and permits. *How to Apply: Steps to Applying to the 8(a) Program*, Small Business Administration, <http://www.sba.gov/content/steps-applying-8a-program> (last visited August 6, 2014). Obtain a free D-U-N-S number for each physical location of your business for registration with the federal government for contracts or grants. In addition, a free Tax Identification Number (TIN) or Employer Identification Number (EIN) must be obtained from the IRS and a profile must be set up for the federal government’s SAM database. Once the SBA general Login System User ID has been obtained and the profile completed, a password will be emailed so that the free online application can be completed.

The SBA 8(a) Business Development Program is a nine-year commitment that is divided into two phases: 1) a four year development phase and 2) a five year transition phase. *About the 8(a) Business Development Program*, Small Business Administration, <http://www.sba.gov/content/about-8a-business-development-program> (last visited August 6, 2014). Participants are provided with training and marketing tools, as well as business development counseling. Participants may also be eligible for additional assistance such as SBA guaranteed loans and grants. This program provides DBE’s with a wealth of opportunity including a Mentor-Protégé Program pairing the 8(a) companies with more experienced companies. Each participating firm must maintain a balance between commercial and government business as well a limit on the amount of sole-source contracts that an individual participating company can receive while in the 8(a) Business Development Program. The local SBA offices are also involved in the development of the participating DBE’s and conduct annual reviews and evaluations.

The Department of Transportation (“DOT”) has also implemented a DBE program that is focused on increasing participation by minority business enterprises in obtaining transportation contracts. *How do MBEs participate in the Department of Transportation’s DBE program?*, Minority Business Development Agency, <http://www.mbda.gov/main/business-certification/how-do-mbes-participate-department->

[transportations-dbe-program](#) (last visited August 6, 2014). The Federal Highway Administration, Federal Aviation Administration, and Federal Transit Administration are the three primary agencies involved in the DOT's disadvantaged business program. Pursuant to federal statute, at least ten percent of the funds authorized for highway and transit financial programs must be allocated toward a disadvantaged business enterprise. In order to be certified as a disadvantaged business enterprise, the business must be a small business owned and controlled by socially and/or economically disadvantaged individuals. The determination is made after onsite visits and personal interviews are completed. Additionally, licenses, stock ownership, and resume of the principal owners and financial portfolio are conducted and reviewed by the certifiers. There is a presumption that members of minority groups are socially and economically disadvantaged for the purposes of participating in this program.

Woman-Owned Small Business Certification

Certification as a woman-owned small business allows a female business owner opportunities to successfully compete for local, state, and government business opportunities. Similar to minority-owned business owners, women entrepreneurs have the opportunity to obtain certification through various entities including the SBA and state and local agencies. The SBA has implemented the Women-Owned Small Business (WOSB) Federal Contract program wherein a certain amount of federal contracts are allocated to women-owned small businesses or economically disadvantaged women-owned small businesses. *Contracting Support for Small Businesses: Women-Owned Small Businesses*, Small Business Administration, <http://www.sba.gov/content/women-owned-small-business-program> (last visited August 6, 2014). To be eligible for certification as a woman-owned small business, the business must be at least fifty-one percent *owned and controlled* by one or more women and primarily managed by one or more women who are U.S. citizens. In addition, the company must be identified as a small business according to the size standards for the particular industry for that business. The SBA has approved the following organizations as third party certifiers for the WOSB Program: the El Paso Hispanic Chamber of Commerce, the National Women Business Owners Corporation, the U.S. Women's Chamber of Commerce, and the Women's Business Enterprise National Council.

Conclusion

Certification is a tedious process but one that can provide a necessary competitive advantage to a small, minority-owned, or woman-owned business. In an effort to streamline the process, the business owner(s) should evaluate the overall objectives for the progress and advancement of the business. If a company is only interested in serving as a vendor or supplier to a particular government agency, then the business should determine the requirements for that particular agency. If the business is focused on applying for contracts in the private sector, certification by a third party certifier is sufficient. By evaluating the business' goals and purpose, owners can avoid being consumed by paperwork and applications from various agencies and focus on the certifications that provide the most benefit to the development and overall success of the business.

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Achieving Lasting Diversity and Inclusion Initiatives

by Janice Holmes



"I believe we get better results if our lawyers reflect the diverse nature of the communities with which they may be involved. Their diversity makes them better able to connect with juries, judges and governmental bodies . . . diversity needs to be addressed daily." Thomas Sager, Senior Vice President and General Counsel of DuPont Legal *quoted in* Tom Forester, *Diversity at Law Firms in the Post-Recession Era*, May 3, 2013, <http://winstead.com/Knowledge-Events/Publications/99181/Diversity-at-Law-Firms-in-the-Post-Recession-Era>.

"Diversity plays an integral role in shaping the basis of the legal system." R. Robbins *et al.*, *Cultural Diversity: Is It Present in American Law Schools and the Legal Profession*, 9 *Journal of Diversity Management*, Volume 9, Number 1 (June 2014). Few people in the legal profession would deny that diversity has been a prevalent issue in recent years. While diversity efforts at many law firms took a back seat to other issues during the economic downturn, many law firms appear to be renewing their efforts with regard to