

1230.1700 CERTIFICATION OF ELIGIBILITY.

Subpart 1. **Required information.** To qualify for the programs authorized by Minnesota Statutes, section 16C.16, each business shall file with the division the information in items A, B, C, D, and H; and E, F, and G as applicable on the application forms provided.

A. The name and address of the applicant, the name of the business, and the principal place of business.

B. Which type of designation, small business, socially disadvantaged small business, or economically disadvantaged area small business is being applied for:

(1) socially disadvantaged small businesses are those businesses owned by socially disadvantaged persons as defined by the Minnesota Department of Administration rules, part 1230.0150, subpart 24;

(2) an individual business which is not a targeted group business but is owned by a socially disadvantaged person, as defined in part 1230.0150, subpart 24, that is encountering the effects of discrimination as evidenced by the owner lacking adequate external support necessary to operate a competitive business enterprise through a diminished ability to secure:

(a) long-term or working capital financing;

(b) equipment, raw material, or supplier trade credit;

(c) bonding and insurance; or

(d) a proportionate share of the market for its goods and services;

(3) the small business is located in an economically disadvantaged area as defined in Minnesota Statutes, section 16C.16, subdivision 7; or

(4) the business is a rehabilitation facility or extended employment provider certified by the Department of Employment and Economic Development.

C. An indication of the type of business operated and the kinds of service, materials, or supplies which can be delivered.

D. A listing of all owners, including percentage of ownership, method of acquisition, ownership in other firms, and copies of the following documents:

(1) Complete financial statements for the business for each of the preceding three fiscal years, or since the inception of the business if established less than three years. Financial statements may be returned to the applicant upon completion of the application process if requested by the applicant. If financial statements are not available, the applicant may submit federal tax form Schedule C (Profit or Loss From Business or Profession).

(2) A profile of the owners' management responsibilities and a description of the management responsibilities assigned to other individuals, including a chronological resume for each owner, officer, and other key personnel.

(3) A statement indicating whether or not the business is an affiliate or subsidiary of a business dominant in its field of operation.

(4) Full disclosure of all owners' and officers' direct and indirect involvement in other businesses and enterprises which are in the same field of operation as the applicant, unless ownership is by common stock regularly bought and sold through recognized exchanges.

(5) Proof of ownership of business. Owners shall submit proof of their ownership of the requisite percentage of the business at the time the application is submitted, and the proof shall consist of stock certificates, a notarized affidavit of stock ownership from the corporate treasurer, a partnership agreement, a canceled check used to purchase ownership, or other recognized proof of ownership.

(a) In the case of a sole proprietorship or where documentary proof of ownership is not available, the owner shall clearly state the reasons for such and be prepared to assist the division in further investigation of proof.

(b) If requested, the owners must show how and when the interest in the business was acquired.

(c) The division may require additional proof or information necessary to verify ownership.

E. In addition, for certification under item B, subitem (2), unit (a), (b), (c), or (d), the following information must be provided for the most recent fiscal year and the preceding four years, if the applicant has operated as a business for four years, identifying the fiscal year reporting system used by the applicant and listing in whole dollar amounts:

(1) Assets:

(a) cash and equivalent: all cash, marketplace securities, and other near-cash items, excluding sinking funds;

(b) trade receivables (net): all accounts from trade, less allowance for doubtful accounts;

(c) inventory: anything constituting inventory for the business;

(d) all other current: any other current assets, not including prepaid items;

(e) total current: the total of all current assets shown in subitems (a) to (d);

(f) fixed assets (net): all property, plant, leasehold improvements, and equipment, less accumulated depreciation or depletion;

(g) intangibles (net): intangible assets, including goodwill, trademarks, patents, catalogs, brands, copyrights, formulas, franchises, and mailing lists, less accumulated amortization;

(h) all other noncurrent: prepaid items and any other noncurrent assets;

(i) total: total of all items listed above.

(2) Liabilities:

(a) notes payable (short-term debt): all short-term note obligations, including bank and commercial paper excluding trade notes payable;

(b) current maturities (long-term debt): that portion of long-term obligations that is due within the next fiscal year;

(c) trade payables: open accounts due to the trade;

(d) income taxes payable: income taxes, including current portion of deferred taxes. Identify federal, state, and local income taxes in subtotals;

(e) all other current: all other current liabilities, including bank overdrafts and accrued expenses;

(f) total current: total of all current liabilities listed above;

(g) long-term debt: all senior debt, including bonds, debentures, bank debt, mortgages, deferred portions of long-term debt, and capital lease obligations;

(h) deferred taxes: all deferred taxes. Identify federal, state, and local taxes in subtotals;

(i) all other noncurrent: any other noncurrent liabilities, including subordinated debt and liability reserves;

(j) net worth: difference between total liabilities and total assets, including minority interest;

(k) total liabilities and net worth: total of all items listed above.

(3) Income data:

(a) net sales: gross sales less returns and discounts allowed, if any;

(b) gross profit: net sales less cost of sales;

(c) operating expenses: all selling, general, and administrative expenses, including depreciation, excluding interest expense;

(d) operating profit: gross profit less operating expenses;

(e) all other expenses (net): includes miscellaneous other income less expenses, such as interest expense, miscellaneous expenses not included in general and administrative expenses netted against recoveries, interest income, dividends received, and miscellaneous income;

(f) profit before taxes: operating profit minus all other expenses (net).

F. If the business seeking certification under item B, subitem (2), unit (a), (b), (c), or (d), is a contractor, the information in item E must be submitted in all categories except as modified in the following:

(1) Assets:

(a) accounts receivable - progress billings: amounts billed on current contracts excluding retention;

(b) accounts receivable - current retention: amounts held back by customers on current contracts as retention;

(c) inventory: costs attributable to equipment, small tools, supplies, and other deferred costs related to contracts in progress where a portion of the cost applies to work not yet performed;

(d) costs and estimated earnings in excess of billings: the difference between the total of costs and recognized estimated earnings to date and the total billings to date;

(e) total current: total of all current assets shown and as modified, changed, or added in the above definitions;

(f) joint ventures and investments: the total of investments and equity in joint ventures.

(2) Liabilities:

(a) accounts payable - trade: open accounts and note obligations due to the trade;

(b) accounts payable - retention: amounts held back as retention in payments to subcontractors on current contracts;

(c) billings in excess of costs and estimated earnings: the difference between the total billings to date and the total of costs and recognized estimated earnings to date;

(d) total current: total of all current liabilities shown and as modified, changed or added in the above definition;

(e) total liabilities and net worth: total of all items shown as modified, changed, or added in the above definitions.

(3) Income data: contract revenues: revenues recognized under percent of completion method (in place of net sales).

G. In separate schedules, all applicants applying under item E or F should show the amounts attributable to depreciation, depletion, amortization, interest income, interest expenses, officers' compensation, and miscellaneous income shown as passive or nonpassive income. A schedule of leased assets with a brief description of type and dollar value must be submitted. A brief outline describing shareholders equity must be submitted, when applicable, for the type of company organization.

In addition, supportive documentation must be submitted when seeking certification under various provisions as follows:

(1) item B, subitem (2), unit (a): for certification as lacking adequate external support in obtaining long-term or working capital financing, any documentation showing denial of loans or offers of loans at terms and rates not currently normal for similar enterprises;

(2) item B, subitem (2), unit (b): for certification as lacking external support in obtaining equipment, raw materials, or supplier trade credit, any documentation showing denial of credit or credit extended at terms, conditions, and rates in excess of the norm expected within similar enterprises;

(3) item B, subitem (2), unit (c): for certification as lacking adequate external support in obtaining bonding and insurance, any documentation showing inability to obtain bonding or insurance at rates and terms normally expected within the industry segment of the applicant.

In all cases, adequacy of documentation, accuracy of financial data, and development of argument and positions with regard to an applicant's lack of external support within any of the four categories of item B, subitem (2), unit (a), (b), (c), or (d), rests with the applicant and must be submitted in writing with the application for certification. The division retains the right of inquiry and verification of all information submitted.

H. When seeking certification under any provision of item B, subitem (1), (2), or (3), or any other certification provision, the applicant shall provide all other relevant or supporting information requested by the division.

Denials of certification under these provisions are subject to appeal under subpart 6.

Subp. 2. [Repealed, 16 SR 194]

Subp. 3. [Repealed, 16 SR 194]

Subp. 4. [Repealed, 28 SR 499]

Subp. 5. **Grounds for rejecting application.** An applicant must be notified in writing of the acceptance or rejection of the application, within 60 calendar days of receipt of the application form and all supporting documents required by the division. An application must be rejected on any of the following grounds:

A. the applicant is dominant in its field of operation or is an affiliate or subsidiary of a business dominant in its field of operation;

B. the applicant has failed to provide all relevant required information;

C. the applicant failed to establish that majority ownership and day-to-day operating control are held by socially disadvantaged small business or economically disadvantaged area small business person(s);

D. the applicant has failed to comply with laws and rules of the state relating to procurement;

E. the applicant has intentionally or negligently falsified application information;

F. the applicant is a broker and/or third-party lessor or operates as a franchiser or franchisee;

G. the applicant's principal place of business is not in Minnesota;

H. ownership of the applicant's business is shared with a previously certified participant who was removed from the vendor list or directory of certified businesses by operation of Minnesota Statutes, section 16C.19, paragraph (c), and part 1230.1850; and

I. the applicant's financial data profile does not fit within the parameters in subpart 5a, item I, subitem (2), unit (a), when applying as an individual business under subpart 1, item B, subitem (2).

Subp. 5a. **Criteria for determinations.** The following standards must be used in determining whether, under subpart 5, item C, a firm is owned and operated on a day-to-day basis by one or more socially or economically disadvantaged persons:

A. The individual's claim, supported by sufficient documentation, that he or she is a socially disadvantaged small business person or an economically disadvantaged area small business person as defined in these rules.

B. The ownership and day-to-day operation of a socially disadvantaged small business or economically disadvantaged area small business must be real, substantial, and continuing, and must go beyond the pro forma ownership of the firm as reflected in its ownership documents. The majority owner of the firm must be employed at least half time by the firm during normal business hours for that industry. The socially disadvantaged or economically disadvantaged small business owners shall have the customary incidents

of business ownership and shall share in the risks and profits commensurate with their ownership interests as demonstrated by an examination of the substance, rather than form of the business arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient. The division shall consider all relevant factors, including the date the business was established, the adequacy of its resources for the work of the contract, and the degree to which financial arrangements, equipment rental or leasing agreements, and relationships with nontargeted businesses vary from accepted industry practice.

C. The socially disadvantaged or economically disadvantaged area business owner shall possess the power and expertise to direct the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy, and operation. If the business is a corporation, the socially disadvantaged or economically disadvantaged area stockholder shall hold the position of chief executive officer or president. The firm must not be subject to any formal or informal restrictions that limit the customary discretion of the socially or economically disadvantaged owners. There must be no restrictions through, for example, bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the socially or economically disadvantaged business owners from making a business decision for the firm without the cooperation or vote of any owner who is not a socially or economically disadvantaged person.

D. If the owners of the firm who are not socially or economically disadvantaged persons are disproportionately responsible for the operation of the firm, then the firm will not be considered to be owned and operated by socially or economically disadvantaged persons.

E. All securities that constitute ownership or control or both ownership and control of a corporation must be held directly by socially or economically disadvantaged persons. No securities held in trust or by any guardian for a minor will be considered as held by socially or economically disadvantaged persons in determining the ownership or control of a corporation.

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

G. In addition to the standards in items A to F, the following circumstances will be given special consideration in determining eligibility:

(1) newly formed firms and firms whose ownership or day-to-day operating control or both ownership and control has changed will be closely scrutinized to determine the reasons for the timing of the formation or of a change in the firm;

(2) a previous or continuing employer-employee relationship between or among present owners will be carefully reviewed to ensure that the employee-owner has the management responsibilities and capabilities referred to in subpart 5 and this subpart;

(3) any relationship between a socially disadvantaged or economically disadvantaged area business and a business that is not a socially disadvantaged or economically disadvantaged area business that has an interest, financial or otherwise, in the socially disadvantaged or economically disadvantaged area business will be carefully reviewed to determine if the interest conflicts with the ownership and day-to-day operating control requirements.

H. The combined gross sales or revenues from businesses operated by the same owners in related fields exceed the highest size standard for the field defined under part 1230.1600, subpart 3.

I. The following standards, along with supporting documentation, must be used in reaching a determination to certify an applicant under subpart 1, item B, subitem (2), unit (a), (b), (c), or (d):

(1) Financial data for the company seeking certification shall be analyzed using formulas, techniques, processes, and ratios used in the annual statement studies published by Robert Morris and Associates (RMA), Philadelphia. Where RMA data does not reflect or provide adequate comparable data for the applicant's main line of business, the "Industry Norms and Key Business Ratios," published by Dun and Bradstreet Credit Services, or any similar representative reporting service may be used.

(2) Certification determination will be made upon careful review of all the evidence submitted. However, to establish eligibility for this review, the financial data applicable to the applicant company shall fall within the following parameters: financial ratios: at any point between the lower quartile and the upper quartile. Upper quartile ratings are indicative of a successful company not in need of the assistance provided through certification. Lower quartile ratings indicate a need for additional assistance before certification. Lower quartile businesses will be referred to the Department of Employment and Economic Development for remedial assistance before becoming eligible for reconsideration for certification.

(3) The following ratios and formulas will be used to determine eligibility for certification:

(a) lacking adequate external support in obtaining long-term or working capital financing: earnings before interest and taxes (EBIT)/interest, sales/working capital, quick ratio, fixed/worth, debt/worth;

(b) lacking adequate external support in obtaining equipment, raw materials, or supplier trade credit: current ratio, quick ratio;

(c) bonding and insurance: none - review of documentation only;

(d) the business has not captured a proportionate share of the market for its goods and services, based on the most current annual statement studies published by RMA. The national average revenues appropriate for the applicant business's standard industrial code and asset size will be divided by the national average assets determined similarly and multiplied by the applicant's actual total assets to indicate a proportionate market share. The applicant business's actual revenues will be divided by this proportionate market share to indicate the actual percentage of the proportionate market attained. Any percentage at 75 or less shall qualify for eligibility.

(4) If eligible under subpart 1, item B, subitem (2), unit (a), (b), (c), or (d), all other documentation shall be reviewed to arrive at a determination to grant or deny certification. The key determinant is "lacking adequate external support ... as evidenced by diminished ability to secure ..." Even though an applicant qualifies as an eligible business on the basis of financial ratios, if the business has been able to secure sufficient loans, bonding, insurance, or credit at the usual industry norms, it is not qualified as there is no evidence showing lack of support. Conversely, the business may show adequate financial ratios but still find itself unable to obtain any, or only partial, amounts of financing, bonding, credit, or insurance needed to remain competitive, or it can only acquire such at unfavorable terms not normal for its industry segment. Upon finding that such circumstances are not a result of internal management deficiencies as indicated by ratios appropriate to these concerns such as the following:

(a) percent profit before taxes/tangible net worth;

(b) percent profit before taxes/total assets;

(c) percent depreciation, depletion, amortization/sales; and

(d) percent officers' compensation/sales;

the business can be certified as a targeted group business. The same management efficiency review shall apply when determining certification due to an inability to capture a proportionate market share; however, no other documentation will need be considered under this eligibility criterion. Findings that a business suffers from internal management

deficiencies will require a denial of certification until remedial assistance has been obtained through referral to the Department of Employment and Economic Development for help from public or private resources. When the appropriate ratio indicators fall within the eligible zone, the business may again apply for certification.

The impact of both short- and long-term business cycles for the economy in general and for the particular business segment in specific shall be considered in arriving at certification findings. When appropriate, an average of two to five years of fiscal data for the applicant company shall be used in determining ratio values.

(5) Businesses seeking certification that operate in distinctly defined commodities, construction services, or product lines must be reviewed for certification under those distinctions. If the company operates in more than one classification, the review must be made under the primary industry segment if 75 percent or more of its net sales or contract revenues are generated by that segment. The business may seek certification for individual product, service, commodity, or construction activities if 25 percent or more of its net sales or contract revenues is generated by a given category. All other financial data required by this application process must be proportionately attributed to the categories for which certification is sought unless it can be conclusively demonstrated that the dollar amounts shown are directly attributable to specific elements. If the company is unable to provide the breakdown of financial data requested by this rule, it shall accept or request certification under the predominant category in its operation.

Subp. 6. **Appeal of rejection of application.** After an applicant has received written notice of rejection of the application for certification as a socially disadvantaged small business or economically disadvantaged area small business, the applicant may appeal the decision in writing to the commissioner of administration within 15 calendar days of receipt of the determination. If there are facts in dispute, the commissioner may refer the matter to the Office of Administrative Hearings for a contested case hearing under Minnesota Statutes, sections 14.57 to 14.62. The applicant has the burden of proof in establishing qualifications for certification. The commissioner shall, if time permits, refer the appeal to the Small Business Procurement Advisory Council or, if the council does not exist, a panel designated by the commissioner, for a recommendation before reaching a final decision. The commissioner shall make a final decision in writing within 60 calendar days of receipt of the appeal.

Statutory Authority: *MS s 16B.04; 16B.18; 16B.19; 16B.22; 16C.03; 16C.16; 16C.19*

History: *16 SR 194; L 1994 c 483 s 1; L 2003 1Sp4 s 1; 28 SR 499; L 2005 c 112 art 2 s 41*

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