

1230.1700 CERTIFICATION OF ELIGIBILITY.

Subpart 1. [Repealed, 42 SR 543]

Subp. 2. [Repealed, 16 SR 194]

Subp. 3. [Repealed, 16 SR 194]

Subp. 4. [Repealed, 28 SR 499]

Subp. 5. **Grounds for denying application.** An applicant must be notified in writing of the acceptance or denial 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 denied 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 qualifying individuals;

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 C, when applying as an individual business under part 1230.1607.

Subp. 5a. Criteria for determinations.

A. In addition to the standards in parts 1230.1604 and 1230.1605, the following circumstances will be given special consideration in determining eligibility:

(1) newly formed businesses and businesses 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 business;

(2) any relationship between a socially and economically disadvantaged, economically disadvantaged area, or veteran-owned small business and a nonqualifying business that has an interest, financial or otherwise, in the socially and economically disadvantaged, economically

disadvantaged area, or veteran-owned small business will be carefully reviewed to determine if the interest conflicts with the ownership and day-to-day operating control requirements.

B. 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 Minnesota Statutes, section 16C.16, subdivision 2.

C. The following standards, along with supporting documentation, must be used in reaching a determination to certify an applicant under part 1230.1607:

(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 part 1230.1607, 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.

D. 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 denial of application.** After an applicant has received written notice of denial of the application for certification as a socially and economically disadvantaged, economically disadvantaged area, or veteran-owned small business, the applicant may appeal the decision in writing to the commissioner of administration within 15 calendar days of receipt of the determination.

The applicant has the burden of proof in establishing qualifications for certification. The commissioner shall, if time permits, refer the appeal to a panel designated by the commissioner, for a recommendation before reaching a final decision. 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, or, if feasible, may affirm or reject the decision. The commissioner shall make a final decision in writing within 60 calendar days of receipt of the appeal. Any person receiving an adverse decision from the commissioner may appeal in any appropriate court of the state.

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; 42 SR 543*

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