

ARKANSAS REGISTER

Transmittal Sheet

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Economic Development Commission

Department Strategic Planning and Research

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Statutory Authority for Promulgating Rules 15-4-314

Rule Title: Minority Business Enterprise and Women-Owned Business Enterprise Certification Program

Intended Effective Date
(Check One)

Date

Emergency (ACA 25-15-204)

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Adopted by State Agency

August 28, 2017

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Kurt Naumann

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8/17/2017

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

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Director, Strategic Planning and Research

Title

August 17, 2017

Date

Minority Business Enterprise and Women-Owned Business Enterprise Certification Program

(Act 1456 of 2003, as amended)

Rules

I. Introduction

The origins of the Minority Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) Certification Program date back to the creation of the Division of Minority Business Enterprise (Act 544 of 1977) and the passage of the “Minority Business Economic Development Act” (Act 698 of 1991) which established a goal for state agencies to annually procure ten percent (10%) of goods and services from minority businesses. Administration of the Minority Business Economic Development Act was transferred from the Department of Commerce to the Department of Economic Development, now the Arkansas Economic Development Commission (AEDC), in 1979 (Act 1060 of 1979).

Act 1456 of 2003 required the AEDC, through the Division of Minority Business Enterprise, to develop a certification process for minority business enterprises seeking state procurement opportunities. Currently, the Division of Minority Business Enterprise, renamed the Division of Minority and Women-Owned Business Enterprise (Division) by Act 1080 of 2017, and the Office of State Procurement of the Department of Finance and Administration work closely to implement program requirements.

Subsequent amendments to the Minority Business Economic Development Act in 2003, 2007, 2009, 2011, and 2017 have changed the name of the act to the Minority and Women-Owned Business Economic Development Act; expanded and added definitions; enhanced reporting requirements; renamed and expanded the duties of the Division of Minority Business Enterprise and the Minority Business Advisory Council; enhanced the responsibilities of the Office of State Procurement of the Department of Finance and Administration; modified procurement target percentages; and expanded the program to include additional minority groups, service-disabled veterans, and women-owned businesses.

Certification by the Minority Business Enterprise and Women-Owned Business Enterprise Certification Program, although not a prerequisite for contracting with the State of Arkansas for goods and services, enhances the ability of businesses to better understand the state procurement and contracting processes, be aware of state

contracting opportunities, and gain exposure through publication of company information in the Division’s online directory of minority business enterprises and women-owned business enterprises. This, consequently, helps minority-owned and women-owned businesses compete for state contracts and strengthens state agencies’ abilities to meet procurement spending targets which are:

- Ten percent (10%) for minority business enterprises with two percent (2%) allocated for service-disabled veteran-owned minority business enterprises and eight percent (8%) for all other minority business enterprises; and
- Five percent (5%) for women-owned business enterprises.

Contact Information

For more information, please contact:

Arkansas Economic Development Commission
Division of Minority and Women-Owned Business Enterprise
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Little Rock, AR 72201
(501) 682-1121

II. Rulemaking Authority

The AEDC has authority, at § 15-4-314, to promulgate rules necessary to create a minority business enterprise and women-owned business enterprise certification process.

III. Definitions

- A. “Minority” means a lawful permanent resident of the State of Arkansas who is:
- (i) African American;
 - (ii) American Indian;
 - (iii) Asian American;
 - (iv) Hispanic American;
 - (v) Pacific Islander American; or
 - (vi) A service-disabled veteran as designated by the United States Department of Veteran Affairs;
- B. “Minority and Women-Owned Business Advisory Council” means the appointed council of advisors to the Division of Minority and Women-Owned Business Enterprise whose duties and responsibilities are delineated under § 15-4-307;

- C. “Minority business enterprise” means a business that is at least fifty-one percent (51%) owned by one (1) or more minority persons;
- D. “Women-owned business enterprise” means a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this state.

IV. Eligible Applicants

To be eligible for certification, applicants must:

- A. Meet the definition of:
 - (i) Minority business enterprise; or
 - (ii) Women-owned business enterprise.
- B. Provide proof of legal organization as a for-profit business entity in good standing with the appropriate governmental agency;
- C. Verify minority or women majority ownership, operation, and management of the business, as applicable, based upon the type of certification requested;
- D. Submit a completed minority business enterprise/women-owned business enterprise application with all required attachments demonstrating the firm’s capacity to conduct business with the State of Arkansas (see Appendix); and
- E. Demonstrate that the business’s annual revenues are less than \$10,000,000.

Eligible minority and women-owned enterprises that are actively certified with any of the following organizations may qualify for a streamlined application by submitting the completed application and proof of certification from the qualifying organization:

- Southern Region Minority Supplier Development Council (MBE);
- Small Business Administration 8(a) Business Development Program;
- Arkansas Department of Transportation (DBE);
- Women’s Business Council-Southwest (WBE); and
- United States Department of Veterans Affairs (SDVOSB).

V. Certification Benefits

Although certification is not a requirement for contracting for goods and services with the State of Arkansas, certified minority business enterprises (CMBE) and certified women-owned business enterprises (CWBE) will enjoy several benefits which include:

- Notification of opportunities to conduct business with state agencies;
- Notification of training events, workshops, networking events, and educational opportunities;
- Designation as a CMBE or CWBE in the Division’s online directory;
- Issuance of an official CMBE or CWBE certificate; and
- A streamlined certification process.

The State Procurement Director, state agency procurement agents, college and university procurement officials, MBE, WBE, constitutional officers, and minority business officers will be notified of businesses which are CMBE or CWBE.

VI. Certification Process

- A. To request certification, eligible applicants shall, utilizing forms prescribed by the Division, submit a completed, signed application with all supporting documentation listed in the Appendix.
- B. The Division shall review the application for completeness to determine that:
 - (i) All required eligibility, fiscal, managerial, and organizational documentation and attachments have been submitted;
 - (ii) The applicant meets the definition of:
 - a. Minority business enterprise; or
 - b. Women-owned business enterprise;
 - (iii) The applicant has provided proof of legal organization as a for-profit business entity in good standing with the appropriate governmental agency;
 - (iv) There is sufficient documentation to verify minority or woman majority ownership, operation, and management of the business, as applicable, based upon the type of certification requested; and
 - (v) All customer business references have been verified.
- C. The Division may:
 - (i) Schedule a pre-certification interview/site visit with the applicant; and
 - (ii) Examine vendor agreements, invoices, partnership agreements, and articles of incorporation that relate to business with the State of Arkansas.

The Division shall also include as an integral component of the ongoing certification program:

- A. An education program to assist minority business enterprises and women-owned business enterprises in achieving certification; and
- B. Outreach to ensure the broadest possible participation of minority business enterprises and women-owned business enterprises and persons proposing new minority business enterprises or women-owned business enterprises.

Eligible minority and women-owned firms, as defined herein, enterprises that are actively certified with any of the following organizations may qualify for a streamlined application by submitting the completed application and proof of certification from the qualifying organization:

- Southern Region Minority Supplier Development Council (MBE);
- Small Business Administration 8(a) Business Development Program;

- Arkansas Department of Transportation (DBE);
- Women’s Business Council-Southwest (WBE); and
- United States Department of Veterans Affairs (SDVOSB).

VII. CMBE and CWBE Operations

CMBE and CWBE are subject to periodic reviews by the Division. It is mandatory to report any change in the status of the business affecting the ability to meet product demand or any change in ownership, with a notarized Notice of Change Affidavit. All business transactions, including billing and the remittance of such, must be conducted under the name appearing on the MBE or WBE certificate.

VIII. Recertification

CMBEs and CWBEs are required to recertify every two (2) years. To initiate recertification, CMBEs and CWBEs shall send a Recertification Affidavit to the Division thirty (30) days prior to their current expiration date stating their desire to maintain certification.

The Affidavit shall state that the business enterprise continues to be fifty-one percent (51%) minority-owned, -operated and -managed, or fifty-one percent (51%) women-owned, -operated, and -managed, and must be signed by the owner, executive officer, and the chairman of its board of directors, if applicable.

IX. Revocation

The Director of the Division of Minority and Women-Owned Business Enterprise (Director) has the authority to suspend, and revoke, or both, the certification of any business which fails to comply with the rules of this program. Any business with a revoked certification will be ineligible to reapply to the program for a period of two (2) years.

Prior to revocation of an MBE or WBE certification under these rules, the MBE or WBE shall be afforded an opportunity to discuss with the Director the issues which have given rise to the revocation.

X. Appeals

Any applicant who is denied its request for certification or recertification because they were unable to prove its minority-owned or women-owned status may appeal the decision to the Minority and Women-Owned Business Advisory Council (Council). A

written notice of appeal must be received no more than thirty (30) days after the date of the notice of denial. The Council shall meet to hear the appeal within forty-five (45) days of receipt of the written notice.

Certified businesses may appeal a revocation action to the Council. A written notice of appeal must be received within thirty (30) days after the date on the notice of the revocation. The Council shall meet to hear the appeal within forty-five (45) days of receipt of the written notice.

Appendix

List of Documents

1. Completed, signed MBE/WBE application form
2. Proof of certification from qualifying organization*
3. Organization Information:
 - a. Sole proprietorships (assumed name documents)
 - b. Partnerships (limited partnership documents; partnership, buy-out, and/or profit sharing agreements; partnership or operating agreement required for businesses with two (2) or more owners, evidencing division of shares and profit distribution)
 - c. Corporations (provide filings in good standing; bylaws; board of directors and/or shareholdings documentation)
4. Copy of bank signature authorization card, form or letter signed by a bank official at your financial institution identifying the person(s) authorized to sign checks on the business's account (signatory authority)
5. Federal Tax Identification Number and Dun & Bradstreet Number (DUNS)
6. Proof of Arkansas residency (State-issued driver's license or identification card)
7. Evidence of United States citizenship or permanent legal resident alien status (United States passport, United States birth certificate, naturalization papers, permanent legal residence alien "green" card, or tribal card)
8. Copy of resume(s) of owner(s), board of directors, and other senior corporate governance/management
9. Company overview
10. Proof of state and federal business tax returns as filed with the Internal Revenue Service (IRS federal transcript) and Arkansas Department of Finance and Administration for the previous two (2) years
11. Copy of insurance**
12. Bonding information**

13. Copy of each professional license**
14. Veterans Administration adjudication letter, if applicant is a service-disabled veteran
15. Financial statements**
16. Service agreements**
17. Proof of capital and/or equity**
18. Business customer references

* Eligible minority- or women-owned businesses certified by a qualifying organization identified in Section IV. of these rules need only submit the MBE/WBE application form and proof of certification from the qualifying organization.

**If required as a normal function of the business