Construction Diary
NAWIC women share their construction projects.

The Digital Native
Should You Be Certified As A Woman-Owned Business?

SBA Gives Women A Helping Hand
Getting business often depends upon being able to differentiate who you are and what you do from your competitors. Sometimes a key to that differentiation is being able to represent that you are a woman-owned business and the ability to back up that claim with proof of a certification to that effect. Although the certification process can seem complicated, it can open doors to additional opportunities in both the public and private sectors. This article describes the factors to consider and what you need to know when evaluating the process of becoming certified as a woman-owned business.

Who do you want to do business with?

Federal, state and local governments often have certification processes available to companies that want to do business in the public sector, sometimes through programs identified as available for women-owned, minority or disadvantaged businesses. Governmental agencies that have certification processes include the Small Business Administration, the U.S. Department of Transportation, and various state and city governments. For specific information about the eligibility requirements and application process for the Department of Transportation’s Disadvantaged Business Enterprise (DBE) program, see www.dotcr.ost.dot.gov/asp/dbe.asp. The Small Business Association also has an Office of Women’s Business Ownership, with information available at www.sba.gov/about-offices-content/.

How should your business be owned and operated in order to get and maintain a certification?

In order to be certified as a woman-owned business, 51 percent or more of the ownership interests of the business must be owned and controlled by one or more women. In addition to ownership, day-to-day operational and managerial control must also reside with one or more women. This means that the board of directors or managers must be predominately female. As long as women control a majority of the board, the appointment of a male to a board position does not jeopardize the certification; however, it is important to avoid governing rules that can jeopardize control. For example, if all decisions of the board are required to be made unanimously, that requirement effectively gives the remaining owners the ability to control the decisions that are made regarding the business.

As described above, some certifying agencies focus their programs on businesses that meet the definition of “socially or economically disadvantaged,” including those that are owned by women or individuals in certain minority groups, including African Americans, Hispanic Americans and certain Asian and Indian groups. To be considered “disadvantaged,” the annual receipts of the business and the personal net worth of the owners are required to be below certain dollar thresholds established by the certifying agency.

Finally, the women owners must have an overall understanding of the business and the managerial and technical competence necessary to run the business. As a company grows, it is not unusual for a number of individuals to be delegated authority to make day-to-day operating decisions; however, the ultimate decision maker must remain a woman. For example, even if a woman were to own all of a business, and control its board, if the owner cedes overall operational authority to a man who acts as president of the company, certification may be jeopardized.

BY MARY WASIK

Discover what you need to know about the process

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Should you consider changes in your structure and operations if you would not currently qualify for certification?

Sometimes established businesses that would not meet the certification requirements will desire to make changes in their ownership and operational structure in order to become certified. If changes in ownership and operations are made and are in place for a significant period of time, a request for certification can be made. However, there must be clear evidence that legitimate changes have been made that caused majority ownership and day-to-day operational control to be relinquished to a woman. It should also be expected that any such application will be carefully scrutinized to establish the certification requirements are not being used to make a claim of control by a woman where no such control actually exists.

What are the issues that can jeopardize your certification?

Certification can be jeopardized if significant resources or support are given to the business from another owner or other third party who is not a woman so that the independence and control of the business is subject to being compromised. These are typically resources or support that a business would not otherwise receive from a third party in an arm's length transaction. For example, a lease that is made by a male owner to a company at less than fair market, or a loan or guarantee of a bank loan that is made by the male owner, would indicate that the business would not be able to independently operate except for the resources of the male owner. The applicant business has the burden of proof to establish to the certifying body that it meets the necessary requirements. Denial of certification can preclude a business from reapplying for certification, and most applications will inquire as to whether the business has ever been denied a certification in the past.

What kind of information must be provided to complete the certification process?

The certification application requires that a significant quantity of information be delivered to the certifying body. The list of required information is lengthy, but much of it can be easily obtained from the company records or by working with your lawyer or accountant. Many organizations now expect the application, and the documents that must be submitted with the application, be delivered through an online system. Common information requests are the following: organizational information (articles of organization, bylaws, corporate minutes and consents, and any shareholder or operating agreements), financial information (financial statements for the business, tax returns of the owners and copies of loan documents), operational information (disclosures of the persons who have decision-making authority, copies of leases and other material agreements, and copies of cancelled checks to confirm financial control or authority). Sometimes owners are reluctant to disclose their personal financial information. If that is a concern, then a threshold decision must be made about the importance of the certification to the business and its owners. Finally, the certifying organization may also conduct a site visit and/or personal interview to verify the information that is provided in the application.

Conclusion

Women-owned businesses continue to be a critical source of job creation in all industries, including construction. However, there is continuing concern that there is a lack of government contracting with women- and minority-owned businesses, and that government set-asides for small businesses are in jeopardy. Owners of qualified construction businesses that have already completed the certification process will face one less hurdle when they want to take quick advantage of an opportunity that becomes available to them.  

Mary Wasik is a partner and Vice-Chair of the Corporate Practice Group at Chicago law firm Levenfeld Pearlstein LLC. Her corporate representation is extensive and includes advising clients on structuring and preparation of limited liability company agreements, including real estate joint ventures, stock and asset purchase and sale agreements and shareholder agreements. She has worked with clients on stock restructurings and advised clients regarding their duties to shareholders and other day-to-day business matters, including the preparation of manufacturing, distribution and service agreements. Wasik also helps clients obtain certifications as minority and women-owned businesses, including structuring sale and purchase transactions for purposes of retaining or obtaining such certifications.