

CHAPTER 189

AN ACT concerning documentation required from business seeking certification as minority or women's business for certain State programs and amending P.L.1987, c.55 and amending and supplementing P.L.1986, c.195(C.52:27H-21.17 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 5 of P.L.1987, c.55 (C.52:27H-21.11) is amended to read as follows:

C.52:27H-21.11 Powers of division.

5. The division shall have the power to:
 - a. Establish a loan referral program and loan packaging program for eligible businesses, using criteria for eligibility which meet the standards established by the authority or which meet the standards established by private sources or by other State or federal programs;
 - b. Compile lists of qualified professionals, including women and minorities in specific areas of expertise, to be disseminated to eligible businesses and to be used in making referrals;
 - c. Use available resources within the State, including, but not limited to, small business development centers, business organizations, academic institutions with business programs, and minority business development offices, to coordinate managerial and technical assistance;
 - d. Establish, in cooperation with institutions of higher education, an internship program for candidates for undergraduate and graduate degrees in business administration and related fields for the purpose of providing assistance to the division, the authority and to businesses which are eligible to receive assistance under this act;
 - e. Provide, consistent with the provisions of this act and in conjunction with, or at the request of, the authority, assistance to eligible businesses, including, but not limited to:
 - (1) Assistance in researching markets or in market analysis;
 - (2) Advice in advertising and marketing;
 - (3) Advice in selecting sales or other distribution channels;
 - (4) Providing information and training with respect to bidding on government contracts;
 - (5) Serving as liaison with the Department of the Treasury and other departments and agencies of State, federal and local government to promote the procurement of contracts for eligible businesses;
 - (6) Assistance in obtaining legal counsel;
 - (7) Providing financial analysis and accounting assistance;
 - (8) Assistance in obtaining appropriate insurance, including benefit packages for employees;
 - (9) Assistance in arranging contracts with franchisers;
 - (10) Assistance in arranging commercial loans made by a State or federally chartered bank, savings bank, or savings and loan association, if, with respect to loans made by State chartered institutions, the loans are made in accordance with the powers conferred on those institutions pursuant to Title 17 of the Revised Statutes, including bridge loans and cash flow loans;
 - (11) Assistance in negotiating license agreements;
 - (12) Assistance in procuring bonding or substitutes therefor;
 - (13) Making referrals to private consultants, institutions, and other providers of services, according to the specific needs of an eligible business;
 - (14) Assistance in finding sources of financing from federal, State, and local sources;
 - (15) Assistance in gaining information about employee training and development programs;
 - f. Provide a central resource for eligible businesses in their dealing with federal, State, and local governments, including information regarding government regulations or laws which affect eligible businesses;
 - g. Initiate and encourage education programs for eligible businesses;
 - h. Notwithstanding any other provision of law, exercise exclusive authority within the State to establish a uniform procedure for departments, agencies and authorities of the State and of its political subdivisions to certify the eligibility of a business to bid on contracts, or otherwise represent itself as a minority or women's business. The division shall be the certifying authority for departments, agencies and authorities of the State, except that when the division's procedure for certification of a business as a minority business or women's business conflicts with a federal certification procedure that affects a State project in which the federal government participates,

the federal certification procedure shall take precedence. Public agencies shall identify those projects and shall notify the division. A political subdivision shall have the responsibility of certifying the eligibility of a women's business or minority business to bid on contracts or otherwise represent itself as a women's business or minority business within the political subdivision, except that, if the business is certified by the division to represent itself as being a minority or women's business under State programs, the political subdivision may accept that certification for eligibility of the business under programs of the political subdivision. A political subdivision shall utilize the uniform certification procedure formulated by the division;

i. Submit to the Governor and the Legislature an annual report regarding its activities and setting forth recommendations of methods which might be utilized to more efficiently and effectively carry out the purposes of this act, and submit to the commissioner periodic reports on the condition of small businesses, and women's and minority businesses in the State; and

j. Provide any other services which it deems necessary or which may be requested by the authority.

2. Section 2 of P.L.1986, c.195 (C.52:27H-21.18) is amended to read as follows:

C.52:27H-21.18 Definitions.

2. As used in this act:

a. "Control" means authority over the affairs of a business, including, but not limited to, capital investment, property acquisition, employee hiring, contract negotiations, legal matters, officer and director selection, operating responsibility, financial transactions and the rights of other shareholders or joint partners; except that control shall not include absentee ownership, nor shall it be deemed to exist where an owner or employee who is not a minority, in the case of a minority business; or a male owner or employee, in the case of a women's business, is disproportionately responsible for the operation of the business or for policy and contractual decisions.

b. "Commissioner" means the Secretary and Chief Executive Officer of the New Jersey Commerce and Economic Growth Commission created pursuant to section 3 of P.L.1998, c.44 (C.52:27C-63).

c. "Director" means the Director of the Division of Development for Small Businesses and Women's and Minority Businesses in the New Jersey Commerce and Economic Growth Commission created pursuant to section 3 of P.L.1998, c.44 (C.52:27C-63).

d. "Division" means the Division of Development for Small Businesses and Women's and Minority Businesses in the New Jersey Commerce and Economic Growth Commission created pursuant to section 3 of P.L.1998, c.44 (C.52:27C-63).

e. "Minority" means a person who is:

(1) Black, which is a person having origins in any of the black racial groups in Africa; or
(2) Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race; or

(3) Asian-American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian subcontinent, Hawaii, or the Pacific Islands; or

(4) American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

f. "Minority business" means a business which is:

(1) A sole proprietorship owned and controlled by a minority;
(2) A partnership or joint venture owned and controlled by minorities in which at least 51% of the ownership interest is held by minorities and the management and daily business operations of which are controlled by one or more of the minorities who own it; or

(3) A corporation or other entity whose management and daily business operations are controlled by one or more minorities who own it, and which is at least 51% owned by one or more minorities, or, if stock is issued, at least 51% of the stock is owned by one or more minorities.

g. "Public agency" means the State or any department, division, agency, authority, board, commission or committee thereof.

- h. "Woman" or "women" means a female or females, regardless of race.
- i. "Women's business" means a business which is:
 - (1) A sole proprietorship owned and controlled by a woman; or
 - (2) A partnership or joint venture owned and controlled by women in which at least 51% of the ownership is held by women and the management and daily business operations of which are controlled by one or more women who own it; or
 - (3) A corporation or other entity whose management and daily business operations are controlled by one or more women who own it, and which is at least 51% owned by women, or, if stock is issued, at least 51% of the stock is owned by one or more women.
- j. "Applicant" means an individual or individuals, a sole proprietor, partnership, joint venture or corporation that applies for certification as a minority business or women's business, in accordance with the provisions of P.L.1986, c.195 (C.52:27H-21.17 et seq.).

3. Section 6 of P.L.1986, c.195 (C.52:27H-21.22) is amended to read as follows:

C.52:27H-21.22 Determining eligibility.

6. The director may require of a first-time applicant for certification as a minority business or women's business the documentation that is necessary to determine the applicant's eligibility for certification. Such documentation may include, but not be limited to:
- a. Names and addresses of the owner, partners or shareholders, as applicable, and their representative shares of ownership;
 - b. Names and addresses of members of the board of directors, in the case of corporations;
 - c. Names and addresses of the officers of the business;
 - d. Number of shares of stock issued and outstanding, in the case of a corporation;
 - e. Articles of incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable;
 - f. Organizational charts;
 - g. An applicant's certificate of birth and motor vehicle driver's license; and
 - h. An affidavit certifying that the applicant is a minority business or women's business, as defined pursuant to section 2 of P.L.1986, c.195 (C.52:27H-21.18).

The director shall not require an applicant to provide any personal federal or personal State income tax returns.

C.52:27H-21.22a Application for recertification for first-time applicant.

4. The director shall require a first-time applicant to apply for recertification as a minority business or women's business one year after the original certification was issued. The director may require of the applicant the documentation that is necessary to determine the applicant's eligibility for recertification, including but not limited to:
- a. Names and addresses of the owner, partners or shareholders, as applicable, and their representative shares of ownership;
 - b. Names and addresses of members of the board of directors, in the case of corporations;
 - c. Names and addresses of the officers of the business;
 - d. Names and addresses of capital investors;
 - e. Number of shares of stock issued and outstanding, in the case of a corporation;
 - f. Articles of incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable;
 - g. The capacity of the business to be bonded;
 - h. The affiliation of the business or any of its owners, officers or directors with any other business entity;
 - i. A representative list of prior and current clients;
 - j. Major real and personal property holdings of the business;
 - k. Financial statements and balance sheets;
 - l. Banking institutions with which the business is affiliated; and
 - m. Organizational charts;
 - n. An applicant's certificate of birth and motor vehicle driver's license;

- o. Personal or corporate federal or State income tax returns;
- p. An affidavit certifying that the applicant is a minority business or women's business, as defined in section 2 of P.L.1986, c.195 (C.52:27H-21.18); and
- q. Any other information the director deems necessary to effectuate the purposes of this act.

C.52:27H-21.22b Application for recertification every five years; required.

5. After a minority business or women's business has been recertified after first receiving initial certification, the director shall require the certified minority business or certified women's business to apply for recertification every five years. The director may require of the applicant the documentation that is necessary to determine the applicant's eligibility for recertification, including but not limited to:

- a. Names and addresses of the owner, partners or shareholders, as applicable, and their representative shares of ownership;
- b. Names and addresses of members of the board of directors, in the case of corporations;
- c. Names and addresses of the officers of the business;
- d. Names and addresses of capital investors;
- e. Number of shares of stock issued and outstanding, in the case of a corporation;
- f. Articles of incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable;
- g. The capacity of the business to be bonded;
- h. The affiliation of the business or any of its owners, officers or directors with any other business entity;
- i. A representative list of prior and current clients;
- j. Major real and personal property holdings of the business;
- k. Financial statements and balance sheets;
- l. Banking institutions with which the business is affiliated; and
- m. Organizational charts;
- n. An applicant's certificate of birth and motor vehicle driver's license;
- o. Personal or corporate federal or State income tax returns;
- p. An affidavit certifying that the applicant is a minority business or women's business, as defined in section 2 of P.L.1986, c.195 (C.52:27H-21.18); and
- q. Any other information the director deems necessary to effectuate the purposes of this act.

C.52:27H-21.22c Supplying false information, fourth degree crime.

6. Any applicant who knowingly supplies false information or has been awarded a contract to which the business would not otherwise have been entitled under P.L.2003, c.189 (C.52:27H-21.22a et al.) shall, upon conviction, be guilty of a crime of the fourth degree.

7. This act shall take effect immediately.

Approved October 3, 2003.