

Richard H. Waxman, P.C.

Corporate & Business Law Alert

alert

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WOMEN OWNED AND MINORITY OWNED BUSINESSES HAVE A BIG LEG UP TO GENERATE REVENUES.

Government Incentives and Targeted Marketing Make State or City Certification a “No Brainer” for Qualified Small Companies.

Starting during the Civil Rights efforts in the 1960s, federal, state and local governments have enacted laws to encourage governments and main stream companies to do business with companies that are owned, controlled and operated by members of designated minority groups and/or women.

As a result of these efforts, many government agencies, and companies that contract with government agencies, are required by law or by contract to allocate a specified minimum percentage of their business to Minority Owned Business Enterprisesⁱ (MBE) or to Woman Owned Business Enterprises (WBE)

To enable and encourage this business, government agencies like the New York State Division of Minority and Women's Business Development (DMWBD) and the NYC Department of Small Business Services have established robust websites where agencies and companies that need or want to do business with an MWBEⁱⁱ can identify and locate those MWBEs that can provide the desired goods or services.

Moreover, smart marketing departments have empirically determined that many customers prefer to do business with an MWBE, at least when the price and other terms are right, and therefore it

is good business to obtain MWBE certification and to feature that status on websites, print ads, stationery, shop windows and the like.

For many years, shrewd business owners who recognized this potential bonanza...but were not owned by women or minorities...were able to game the system. They did this in many ways, perhaps the most notorious was for a male owner to transfer 51% of corporate stock to his wife. This was also often accomplished by establishing a “sister company” owned by a trusted woman or minority employee. In either case, *voila* an WBE or MBE!

Then the government agencies caught on!

First, they established requirements that business conducted with MWBEs only counts if the MWBE is “certified” by an agency like DMWBD.

Then the certifying agencies stopped taking applications at face value and implemented careful vetting and follow up procedures to confirm that the women or minority owners truly did own, control and operate the enterprise. This is accomplished through long and detailed application processes, requiring submission of detailed operational information and voluminous documentation, followed up by post application telephone calls, written interrogatories and visits to the place of business.

While this helps weed out the cheaters, it has made the application process an arduous task for most small companies, for several reasons:

First, many of the questions call for corporate formation, governance and finance documents that applicants often do not possess and/or with which they are unfamiliar.

Second, some of the questions are traps which, intentionally or not, lead applicants to provide information that may ultimately undermine endeavors to demonstrate that they are in fact owned, controlled and operated by minorities or women.

Third, the government web-sites are, to put it kindly, unwieldy. Unless one is computer savvy and has used the sites on numerous occasions, properly entering and attaching requested information and documents can be very challenging.

Fourth, the agency people you can access by phone are generally not very savvy about how the sites work. There are people behind the scenes who can be very helpful, but their contact information cannot be found on the websites and appear to be well guarded secrets.

Fifth, because of agency budgetary constraints, the waiting times between submission of the application and assignment of a Certification Analyst has grown to many months...and sometimes more than a year...for applicants that are unable to move to the front of the line.

We at Richard H. Waxman, P.C. have sheperded numerous applications through the process on behalf of our clients and as a result:

- As lawyers we are familiar with the corporate governance and finance documents and know how to obtain what the applicant does not possess.
- We are familiar with the “trap questions” and can help applicants avoid falling prey to them...especially when the Applicant involves us in forming, organizing and capitalizing the enterprise.
- We are computer savvy, very familiar with the certification websites and know how to find the “behind the scenes” people that can provide invaluable help through the difficulties encountered by an applicant along the way.
- We even have some ideas about how to get your application to be “fast tracked.”

CONCLUSION

If your enterprise is minority or woman owned, there are potential customers out there that are required by law to do business with you...and there is infrastructure in place to help them find you!

All you need to do is to follow the steps necessary to obtain certification as a Minority or Woman Owned Business Enterprise...and we can help you with that somewhat challenging process.

If you have any questions about Minority or Woman Owned Business Enterprises, or about any other facet of business law, please contact Richard Waxman at:

rwaxman@waxmanlaw.com

In case you have trouble accessing this alert, or seeing the footnotes in the e-mail, a PDF copy is attached in the banner at the top of this e-mail.

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Please note that this Alert is limited to a very brief overview of the topics covered. It is not intended to be relied upon, and must not be relied upon, as legal advice for any specific situation. Appropriate legal advice must always be based on numerous factors including without limit all of the specific facts of the case and the jurisdictions whose law may apply.

ⁱ NYS Executive Law Sec. 310 defines “minority” as “a United States citizen or permanent resident alien...in one of the following groups:

(a) Black persons having origins in any of the Black African racial groups;
(b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

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- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America.
 - (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

ii MBEs and WBEs are sometimes referred to collectively as MWBEs.