

# YOUR BUSINESS CLIENT'S PERSPECTIVE

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Much has been written about diversity in the workplace, fighting racism and discrimination, and similar issues related to diversity, equity, and inclusion (DEI). This article provides an additional perspective, hopefully one that is practical for paralegals with clients who are minority-owned business owners. Many thanks to Laura Aguilar, ACP, for allowing me to interview her and lean on her wealth of resources.

Many large corporations and federal and state governmental agencies want to do business with minority-owned businesses. Many federal government agencies are even mandated to reward a substantial number of contracts to certified minority-owned businesses. For example, the U.S. Department of Transportation requires that at least 10% of the money spent on contracts for certain projects go to businesses that are minority-owned. Additionally, certain entities, such as state transportation agencies, that receive Department of Transportation funding are required to develop disadvantaged business enterprise (DBE) programs for small business concerns where socially- and economically-disadvantaged individuals own at least 51% interest and control the day-to-day operations.

Any minority-owned business that wants to be considered for these kinds of opportunities needs to be officially certified as a Minority Business Enterprise (MBE). This is where you, as a paralegal, can be of great assistance. By understanding a few key concepts, you can bring additional value to your attorney and the client. If nothing else, it always helps to have a better understanding of why things are the way they are. Now, where to start?

In business and politics, they always say "follow the money." Exploring an

MBE certification is no different. There are certainly public policy reasons for the push to award public and private contracts to minority-owned businesses. Corporations not only receive a lot of pressure from public interest groups, many executives believe that, in order to successfully sell their goods and services to minorities, they should also offer business contracting opportunities for minorities. Similarly, governments want to ensure that all firms have an opportunity to participate in contracts that are paid with tax dollars. If your firm's client is a minority-owned business and is not certified as such, that business might be missing out on contracting dollars that are set aside specifically for minority-owned businesses.

Set-asides allow small, minority-owned businesses to compete with bigger firms. But they also give these minority business enterprises a chance to diversify their businesses. An enterprise may start with a smaller contract, such as a cleaning contract on a construction site, but may learn how to hire and manage other contracts and move up the value-chain ladder. The business possibilities can really open up for your client.

Your minority-owned business client might feel unprepared to enter into this new arena of contracting with large corporations and/or the government, but there are many government programs that help new business owners navigate these difficult aspects, including the United States Small Business Administration's 8(a) program. This program connects contractors to mentors, helps them understand and find adequate business insurance, and may help them understand, where needed, contract terms and loan agreements. Additionally, credit is the lifeblood of business, and there are few businesses that can survive without access to

financing. Some MBE-supporting programs may provide low-interest loans or grants, or they may provide loan guarantees, essentially reducing the risk to lenders who give money to disadvantaged business enterprises.

## **Requirements for MBE Certification**

For-profit businesses of any size that are located in the United States and are owned, operated, and controlled by minority group members who are U.S. citizens are eligible to apply for MBE certification. For the purposes of NMSDC's program (see side bar), a minority group member is an individual who is a U.S. citizen with at least 25% Asian-Indian, Asian-Pacific, Black, Hispanic, or Native American heritage. Documentation to support the claim is required. Additionally, at least 51% of the business or the company's stock must be owned by such individuals, and the management and operations must also be controlled by such individuals. These requirements are important to understand from the beginning of the project, as certain ownership and management changes may be necessary before any applications for minority certification can be made. It is important, however, that the minority-owned business not appear to be a front for another non-minority-owned business that would otherwise be ineligible.

In order to assure that certification as a minority-owned business is properly given, the certifying agencies typically require prior tax returns of the business and, in certain instances, the minority owners, as well as loan agreements, leases, and other types of agreements that will surface any relationship a new minority-owned applicant business would have with a "big brother," ineligible company. In other words, minority-owners must not just own 51% of the business,

they must also be qualified to run the business, be the primary decision makers, and be responsible for the day-to-day operations.

Additionally, many business opportunities are also available for women business enterprises (WBE). The Women's Business Enterprise National Council (WBENC) is the largest third-party certifier of woman-owned businesses. They provide access to a current list of supplier diversity and procurement executives at hundreds of major U.S. corporations and governmental entities and is the approved certifier for the U.S. Small Business Administration Women-Owned Small Business Federal Contracting Program. As with MBEs, WBEs must meet the 51% rule in ownership, management, and operations.

Although this is just an overview of the types of minority-owned business certifications that are available and some of the requirements, it is important that any paralegal who is assisting with a client's MBE, WBE, or similar certification become familiar with the specific requirements of the pertinent certifying agency. Paralegals can then develop a checklist of information and documentation that will need to accompany the certification application. Depending on the agency and the type of certification being sought,

the documentation that is reviewed at the initial application process can be substantial, so it is important to make sure the application submitted is complete, and the paralegal can play a vital role in the application process.

From the outset, it is important to understand your minority-owned client's business, its business plan, and who its target customers are. With this understanding, you can better serve your attorney and the client in meeting the objectives of tapping into contracting opportunities that may not otherwise be available to the client.



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*Laura Aguilar, ACP (left) and Yolanda A. Garcia, TBLS, BCP (right)*

## CONTRACTING WITH CORPORATE AMERICA

If your firm's minority-owned business client wants to connect with private-sector buyers, the National Minority Supplier Development Council (NMSDC) certification can be a real asset. The NMSDC has an impressive list of corporate members, including IBM, Microsoft, and Marriott. The NMSDC helps these large corporations to connect with the more than 17,000 minority-owned suppliers in its database. Once certified as an MBE by the NMSDC, minority business executives have access to program benefits, among which are opportunities to grow their businesses by gaining private and government contracts through inclusion in (and access to) the NMSDC's supplier database and regional leads and alerts for procurement opportunities from corporate members. In addition to access to Corporate America, many states and cities also accept NMSDC certification for programs designed to help minorities win public-sector contracts.

## CONTRACTING WITH GOVERNMENTAL ENTITIES

If your firm's minority-owned business client wants to connect with public sector agencies, you may be asked to review the requirements for qualification as an SBA 8(a) contractor. Among the resources offered by the U.S. government's Small Business Association are programs for qualifying minority-owned firms meant to help them grow and develop. These programs include one-to-one counseling and training workshops, as well as management and technical guidance. Minority-owned businesses that become certified under SBA (8)a Business Development guidelines can leverage this assistance and certification to compete successfully for government contracting opportunities.

Similar to the requirements for certification with a NMSDC certification agency for an MBE seeking to do business with large corporations, when the minority-owned business client seeks government contracting opportunities, to be approved and certified as a minority-owned business (also referred to as a certified disadvantaged business) under the SBA's (8)a Business Development program, a business must be majority-owned 51% or more by an individual(s) who is/are American citizens (by birth or naturalization) who is/are both socially and economically disadvantaged.

Additionally, minority-owned businesses that want to compete for federal contracts must first register with the SAM (System for Award Management). Minority-owned businesses that want to become a federal supplier with the GSA (Government Services Administration) can find guidance and assistance on the GSA portal site. From the portal's landing page, you will be able to assist your attorney in determining whether becoming a government supplier is right for the minority-owned business client, how to become a vendor, and how to get information about pursuing government contracts. This site also has a listing of set-asides, such as the percentages of contracts that must be awarded to minority and disadvantaged businesses, which apply to every federal government purchase valued from \$2,500 to \$100,000.

Each state has its own process for awarding government contracts, including provisions for awarding contracts to minority-owned businesses within the state. To get information about your state's minority-owned business programs, contact your state's DBE (Disadvantaged Business Enterprise) program.