

## CHAPTER 11

## WOMEN-OWNED AND MINORITY-OWNED BUSINESSES

## Authority

N.J.S.A. 52:27H-21.24.

## Source and Effective Date

R.1993 d.237, effective April 30, 1993.

See: 25 N.J.R. 1056(a), 25 N.J.R. 1753(a), 25 N.J.R. 2484(a).

## Executive Order No. 66(1978) Expiration Date

Chapter 11, Women-Owned and Minority-Owned Businesses, expires on April 30, 1998.

## Chapter Historical Note

Chapter 11, Women-Owned and Minority-Owned Businesses, was adopted as R.1987 d.376, effective September 21, 1987. See: 19 N.J.R. 1176(a), 19 N.J.R. 1739(a). The Executive Order No. 66(1978) expiration date for Chapter 11 was extended by gubernatorial waiver from September 21, 1992 to April 30, 1993. See: 24 N.J.R. 4333(a). Pursuant to Executive Order No. 66(1978), Chapter 11 was readopted as R.1993 d.237. See: Source and Effective Date.

## CHAPTER TABLE OF CONTENTS

## SUBCHAPTER 1. CERTIFICATION

12A:11-1.1	Application and scope
12A:11-1.2	Definitions
12A:11-1.3	Standards of certification for minority businesses and women businesses
12A:11-1.4	Certification procedure for minority businesses and women businesses
12A:11-1.5	Acceptance as a certified minority business or women business
12A:11-1.6	Time for application to be certified as a minority business and/or women business
12A:11-1.7	Denial of certification as a minority or women business
12A:11-1.8	Procedure for challenging a business certified as a minority business and/or women business
12A:11-1.9	Obligations to provide information and penalties for failure to provide complete and accurate information
12A:11-1.10	Period and terms of certification
12A:11-1.11	Fees for certification
12A:11-1.12	Certification reciprocity
12A:11-1.13	Information confidentiality

## SUBCHAPTER 1. CERTIFICATION

## 12A:11-1.1 Application and scope

(a) The rules in this subchapter are promulgated by the Department of Commerce and Economic Development to implement the Unified Certification Act, P.L. 1986, c.195. The Act establishes a unified procedure for the certification of women-owned and minority-owned firms, which firms are seeking to qualify for certain government programs and

firms doing business with casino licensees pursuant to P.L. 1987, c.137.

(b) The Act requires the Department of Commerce and Economic Development to establish and implement standards and procedures for certifying women-owned and minority-owned businesses for certain government programs and firms doing business with casino licensees pursuant to P.L. 1987, c.137.

(c) Applications and questions regarding certification of women-owned and minority-owned businesses should be addressed to:

N.J. Department of Commerce and Economic Development

Certification and Approvals Unit

CN 835

One West State Street

Trenton, New Jersey 08625

(d) The Act applies to every women-owned and minority-owned firm that wishes to do business with any department or agency of the State of New Jersey which department or agency has specific programs which require the certification of authenticity of ownership for women-owned and minority-owned businesses and for businesses wishing to do business with casino licensees pursuant to P.L. 1987, c.137.

## 12A:11-1.2 Definitions

The words and terms used in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

“Administrator” means the administrator for the Certification and Approvals Unit.

“Broker” means a person who for all or part of his time is in the business of buying and/or selling of tangible and/or non-tangible property in the capacity of but not limited to a manufacturers representative, distributor, or agent (non-employees of the business) and who does not exercise dominion or possess title over the items or things for sale.

“Certification” means that a minority-owned or women-owned business has been authenticated as being at least 51 percent owned and controlled either by minorities or females for participation in State programs requiring certification, as judged and determined by the Certification and Approvals Unit of the Department of Commerce and Economic Development.

“Certification and Approvals Unit” (CAU) means the unit in the Department of Commerce and Economic Development which is given sole authority over certification of

minority and women businesses for State programs or which may provide certification for Federally mandated programs.

“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 business, is disproportionately responsible for the operation of the business or for policy and contractual decision. Control will also not be deemed to exist if in the judgement of the Administrator of the Certification and Approvals Unit and by normal industry standards, minority or women are not reasonably judged to be in control of that business.

“Commissioner” means the Commissioner of the Department of Commerce and Economic Development.

“Days” means the normal operating business days of the state.

“Department” means the Department of Commerce and Economic Development.

“Director” means the Director of the Division of Development for Small Businesses and Women and Minority Businesses in the Department of Commerce and Economic Development.

“Division” means the Division of Development for Small Businesses and Women and Minority Businesses in the Department of Commerce and Economic Development.

“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.

“Minority business” means a business which is:

1. A sole proprietorship, partnership or joint venture owned and controlled by minorities in which at least 51 percent of the ownership interest is held by minorities and the management and daily business operation are controlled by one or more of the minorities who own it; or

2. A corporation or other business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more minorities who own it, and which is at least 51 percent owned by one or more minorities or, if stock is issued, at least 51 percent of the stock is owned by one or more minorities.

“Principal” means any officer, director, or individual who directly or indirectly holds any beneficial interest in or ownership of the securities of the business and/or any employee of the business who is empowered by title or by explicit assignment to authorize the procurement, purchase, or contracting of equipment, goods, services, or supplies whatsoever involving an expenditure of \$1,000.00 or greater.

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

“Woman or women” means a female or females, regardless of race.

“Women 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 percent 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 business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more women who own it, and which is at least 51 percent owned by women or, if stock is issued, at least 51 percent of the stock is owned by one or more women.

#### 12A:11-1.3 Standards of certification for minority businesses and women businesses

(a) A business may be eligible to be certified as a minority business, a women business, or both.

(b) In order to be eligible to be certified under the Act a minority or women business must be independently owned, operated, and controlled.

1. For purposes of these rules a business shall be deemed to be independently owned, operated, and controlled, if its management is responsible for both its daily and long term operation, and that management owns at least 51 percent interest in the business.

(c) In order to be eligible as a minority business, a business must be a sole proprietorship, partnership, joint venture, corporation, or other business entity authorized under the laws of the United States, which is at least 51 percent owned, operated and controlled by persons who are Black, Hispanic, Asian American, American Indian or Alaskan native.

(d) In order to be eligible as a women business, a business must be a sole proprietorship, partnership, joint venture, corporation, or other business entity authorized under the laws of the United States, which is at least 51 percent owned, operated, and controlled by persons who are women, without regard to race.

#### **12A:11-1.4 Certification procedures for minority businesses and women businesses**

(a) Any business which seeks to be certified under the Act as a minority business and/or women business must apply to the Certifications and Approvals Unit of the Department of Commerce and Economic Development. For this purpose, the Department shall prepare a New Jersey Uniform Certification Application. This form shall be available from the Department, and other agencies and departments of the State which maintain programs which require certification of minority and women businesses.

(b) As part of its application to the Department a business shall provide all information and documents requested by the Uniform Certification Application and any additional information requested by the Certification and Approvals Unit. The information to be submitted for review shall include:

1. Place of business;
2. Names and addresses of the owners, partners, or shareholders as applicable, and their representative shares of ownership;
3. Names and addresses of members of the board of directors in the case of corporations;
4. Names and addresses of the officers of the business;
5. Names and addresses of capital investors and the amount of capital contributed;
6. Numbers of shares of all classes of stock issued, and stock outstanding in the case of a corporation;
7. The bonding capacity and history of the business;
8. The affiliation of the business or any of its owners, officers or directors with any other business entity;
9. A representative list of current and prior clients for the past two years where applicable;
10. A complete list of major real and personal property holdings of the business;

11. A complete disclosure of financial statements and balance sheets;

12. A complete listing of banking institutions with which the business is affiliated; and

13. A complete listing of previously attained certifications and a listing of all legal entities which denied certification.

(c) An applicant must fully and accurately complete, where directed in writing, all relevant parts of the Uniform Certification Application.

(d) The application may be delayed or rejected if an applicant fails to fully complete, as directed, the Uniform Certification Application, fully document specifically requested information, or comply with an additional request for information or documentation.

(e) If the applicant knowingly supplies incomplete or inaccurate information the applicant shall be disqualified under these rules, barred from reapplying for certification for a period of up to 18 months from the date of notice of disqualification, and may be subject to other penalties described in N.J.A.C. 12A:11-1.8.

(f) In order to be certified under the Act, a business must also comply with any pre-approvals or other eligibility requirements legitimately established by the contracting agency in whose program the business wishes to participate.

#### **12A:11-1.5 Acceptance as a certified minority business or women business**

(a) When a business is determined by the Certification and Approvals Unit to be a minority and/or women business, the business will be added by the Department to the Certified Business Register. The businesses on this register shall be eligible for all appropriate State programs which require certification as a criteria for participation in a specific program. There shall be no limit to the number of businesses on the register. Each business shall be placed on the register denoting its status as minority and/or women-owned.

(b) When a business is placed on the Certified Business Register that business shall be eligible for all appropriate State programs which require certification as a criteria for participation. Once a business is placed on the register it cannot be denied an opportunity to participate in the various State programs until it is removed from the register.

(c) When a business is placed on the Certified Business Register it shall be informed by CAU by mail of its certification status. The CAU shall also issue an individual certification number exclusive to the business as a part of the certification procedure.

**12A:11-1.6 Time for application to be certified as a minority business and/or women business**

(a) A business may apply to be certified by the Department, Certification and Approvals Unit, at any time, whenever State programs require certification of the control and ownership of a business under the Act as a minority business and/or women business.

(b) A business wishing to participate in a specific State program which requires certification must apply at least 30 days prior to its intended entry into the program. The 30 day period may be reasonably extended by the administrator when:

1. The business fails to provide all information requested by the Uniform Certification Application; or
2. Additional information is requested from the business to authenticate its status; or
3. The business, through no fault of its own, is delayed or prevented from forwarding any requested information or documentation.

**12A:11-1.7 Denial of certification as a minority or women business**

(a) When a business has been denied certification based upon the information provided by that business in its submitted Uniform Certification Application or its annual Certification Verification Statement the business may appeal the decision of the CAU.

(b) A business that is being denied certification shall have 10 days from the date of notification to request a hearing with the CAU Administrator for his first level appeal.

(c) The procedure for appeal of a denial of certification shall be executed in the same manner as hearings for a challenge to a certified business as provided by N.J.A.C. 12A:11-1.8. The CAU shall be considered as the challenger pursuant to N.J.A.C. 12A:11-1.8.

**12A:11-1.8 Procedure for challenging a business certified as a minority business and/or women business**

(a) The qualifications under these rules of a business on the Certified Business Register may be challenged by any other business on the State bidders list or the State set-aside bidders list, businesses approved as an Inter-Agency Procurement Committee vendor (Ex. Order 46), and any State department or agency. The Commissioner shall have the discretion to dismiss a challenge for insufficient evidence.

1. A certification challenge shall be made in writing to the Department, with copies to the challenged business and to the appropriate contracting agency where a specific contract is at issue.

2. A certification challenge to the Department must be concerned with the authenticity of a business under these rules as a minority business or women business. Challenges of any other kind must be directed to the State department or agency which requires those other qualifications.

3. The written challenge shall be accompanied by supporting documentation of the charges.

(b) In the case of a challenge to a certified minority or women business, the State agency or department making a contract award under a specific program shall be notified within three days of receipt of the challenge and shall immediately suspend any further awards under the contract for a period not to exceed 20 days so the Department may conduct a hearing if warranted.

1. In the event that a currently certified minority and/or women business is unsuccessfully challenged under these rules by the Department, the State agency or department shall proceed to award the contract as otherwise authorized by State statute.

2. In the event that a currently certified minority and/or women business is not disqualified by the Department within 20 days, any contract awards suspended at the time due to the challenge shall be allowed to be awarded without prejudice.

3. The right to challenge a currently certified minority and/or women business is in addition to and is independent of any protest hearing rights which are afforded by any State agency or department.

(c) When the Department receives a challenge, upon the request of the business whose certification is at issue, the Department shall conduct a hearing on the matter as follows. The business must request the hearing within five days of the suspension of a contract award or in the case when no contract award is involved, within five days from receipt of notice that the business is subject to a challenge proceeding.

1. The Department shall notify all interested parties of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger. However, the department may use its own resources to ascertain the viability of a challenge and the status of a business.

3. The hearing will be conducted by the designee of the Commissioner. This designee shall issue a written report to the Commissioner of the Department within five days of the close of the hearing.

4. A participant at the hearing who is a party to the challenge procedures will be permitted to file written exceptions to the hearing officer's report no later than three days from the issuance of the report.

5. Thereafter, the Commissioner shall issue a final decision on the challenge and notify the parties by certified letter.

6. The entire hearing challenge procedure shall take no more than 20 days to complete; time shall not be considered to run until a contract award is suspended. In the case where no contract award is in question, time will run from the date of the notification to the business by certified mail that it is the subject of a challenge proceeding.

**12A:11-1.9 Obligations to provide information and penalties for failure to provide complete and accurate information**

(a) Applicants for certification under these rules shall accurately and honestly supply all information required by the Department.

(b) When a business has been certified as a minority and/or women business on the basis of false information knowingly supplied, the Commissioner of the Department, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1-1.1 et seq., may:

1. Assess the business a penalty in the amount of not more than 10 percent of the total dollar amount of all contracts and/or purchase awarded by the State to that business in reliance of its business representation of ownership and/or control, for the duration of the period of the misrepresentation.

2. Order the business ineligible to transact any business with the State, for a period of not less than 12 months and not more than 60 months.

(c) Any business certified by the Department as a minority and/or women business shall immediately apprise the Department of any circumstances which in any way affect the ownership composition of the business, or the control over the business.

(d) The failure of a business to report any such changed circumstances, or the intentional falsification shall disqualify the business for inclusion on any Certified Business Register under these rules and may subject the business to other sanctions provided for by other State agencies or departments, as they so relate.

**12A:11-1.10 Period and terms of certification**

(a) A business once duly certified by CAU shall not be required to submit a Uniform Certification Application for a period of five years after the effective date of the certification, providing that the firm:

1. Submits on an annual basis not more than 20 days before or 10 days after the date of initial certification

notice a Verification Statement, which shall attest that the ownership and control of that business on which certification was granted has not changed; and

2. Submits within 20 days notice of any material change in the business, whether it affects the status of the business under the Act or not.

**12A:11-1.11 Fees for certification**

(a) The applicant will be responsible for reimbursing the State for costs associated with providing a site visit when necessary. The applicant business will not be issued certification until it has satisfied this obligation. Associated costs shall include but will not be limited to:

1. Cost of travel to the location of the site visit which is outside a 150 miles radius from the city of Trenton; and

2. Out of pocket per diem expenses of the State employee performing a site visit when required.

**12A:11-1.12 Certification reciprocity**

(a) The Commissioner may form reciprocal agreements with other public or private certifying entities as he deems appropriate to facilitate minority and women business development and growth.

(b) All reciprocal agreements must provide that:

1. The quality of the program of the other certifying agency is the relative equal of the Department's program; and

2. The Department shall have the right to review all relevant information possessed by the other public or private entity pertaining to the certification of any business seeking to be certified by the Department.

**12A:11-1.13 Information confidentiality**

(a) All information and documents submitted to the Department as part of the certification application shall be confidential and used only for purposes of determining certification, except that information provided for the Certified Business Register.

(b) All submitted information and documents shall be handled on a strict need to know basis.

(c) Information and documents provided to CAU may be shared with other entities who need the information respective of reciprocal agreements authorized by the Commissioner pursuant to N.J.A.C. 12A:11-1.12.

(d) Information and documents provided to CAU may be made available in a public manner where required during a challenge or appeal proceedings under this subchapter.