

Obtaining Disability-Owned Business Enterprise Certification

A Lawyer's Guide to Supplier Diversity

By John D. Kemp and Aditi Dussault

In today's competitive business climate, distinguishing yourself, understanding your client's many needs, and providing outstanding service are all key to getting and keeping business. This article explains (1) the value of obtaining certification as a business owned by individuals with disabilities and (2) what advice to provide to a business considering certification.

The US Business Leadership Network (USBLN) is the national disability organization that serves as the collective voice of over 60 Business Leadership Network affiliates across North America, representing over 5,000 employers. The USBLN helps build workplaces, marketplaces, and supply chains where people with disabilities are respected for their talents, while supporting the development and expansion of its BLN affiliates.

Kemp is executive director and general counsel of the US Business Leadership Network. Mr. Kemp is a partner in the Washington, D.C., law firm of Powers, Pyles, Sutter & Verville, PC. Dussault is director of Affiliate Relations & Disability Supplier Diversity Program for the US Business Leadership Network in Washington, D.C. Her e-mail is aditi@usbln.org.

The USBLN recognizes and supports best practices in the employment and advancement of people with disabilities; the preparedness for work of youth and students with disabilities; marketing to consumers with disabilities; and contracting with vendors with disabilities through the development and certification of disability-owned businesses.

The US Business Leadership Network Disability Supplier Diversity Program (USBLN DSDP) offers businesses that are owned by individuals with a disability the opportunity to increase their access to potential contracting opportunities with major corporations, government agencies, and one another. Through the program, businesses can obtain Disability-Owned Business Enterprise Certification and get connected to a nationwide network of corporate and government procurement professionals, disability advocates, and other certified disability-owned businesses.

If you are a lawyer who counts entrepreneurs among your clientele, you are likely to encounter diversity certification programs within your daily work and may be asked to advise clients on certification eligibility and processes. Or you might

work for a firm that is eligible for certification and want more information about the benefits of becoming certified. Alternatively, your firm may be in the process of expanding its diversity initiatives and interested in adding diverse-owned businesses to your list of vendors. This article will focus on the USBLN DSDP as a means to address these various perspectives on supplier diversity and connect you to resources about best practices in procurement from diverse companies.

Supplier Diversity Overview

Supplier diversity began in the late 1960s and early 1970s in conjunction with the Civil Rights Movement within the United States. Through executive orders and federal legislation, minority-owned firms were included in opportunities to bid on government projects and those of major corporations supplying the government. Rigorous third-party certification of minority status was needed to reduce incidents of fraud and misrepresentations of the minority status of a business.

The National Minority Supplier Development Council (NMSDC) was formed during the 1970s to certify businesses as Minority Business

Enterprises. Since that time, other national organizations have been created to address the needs of different affinity groups, including women, lesbian, gay, bisexual, and/or transgender (LGBT) individuals, and individuals with disabilities. These organizations have developed certifications for their respective groups to promote contracting within these segments.

At this time, there is no contract compliance requirement compelling firms to contract with disability-owned businesses. However, many companies are interested in adding disability-owned businesses to their supplier diversity programs to position their company strategically as a leader in disability-inclusion within their industry.

To be eligible for USBLN DSDP certification, a business must

- Be at least 51 percent owned, operated, managed, and controlled by individuals with a disability or service-disabled veterans who are either U.S. citizens or lawful permanent residents;
- Exercise independence from any other business enterprise;
- Have its principal place of business (headquarters) in the United States; and
- Have been formed as a legal entity in the United States.

These certification criteria very closely follow the criteria of certifications offered by other national groups. Clarifying the definition of disability with respect to supplier diversity presented a challenge, as the federal government alone has over 70 definitions of disability. The USBLN definition of disability is based on the Americans with Disabilities Act of 1990, which was intended to mitigate discrimination against individuals with a disability in employment, and the Schedule A Hiring Authority of the federal government, which enables a government agency to use an abbreviated hiring procedure when recruiting an employee with the disability. The USBLN defines disability as a physical and/or mental impairment that substantially limits one or more major life activities of an individual and can be

demonstrated by appropriate documentation. This definition of disability includes service-disabled veterans.

The USBLN DSDP certification process begins with a business owner making an informed decision that certification is a good fit for his or her business. Then a certification application is completed. The completed certification application, along with required supporting documentation



(including business contact, capabilities, historical, financial, and governance information), is then submitted to the USBLN. Once a completed application is received, the business undergoes initial review by a certification committee and then a site visit is scheduled. After completion of the site visit, a final review and vote on the application is completed by the certification committee. At that time, a determination is made about the eligibility of the applicant business for certification, and the decision is provided to the business owner within 10 to 15 business days. There is an annual recertification process. Site visits take place at a minimum of every third year.

Why Do Companies Get Certified?

The benefits of obtaining Disability-Owned Business Enterprise Certification are numerous. Every major corporation offers different programs, events, and opportunities for businesses certified as diverse in order to further the goal of inclusion and a level playing field.

Disability-Owned Business Enterprise Certification provides companies with the opportunity to register as a certified diverse vendor in corporate supplier diversity databases. These

databases are the first destinations corporate procurement representatives visit when looking for potential vendors for a contract opportunity. Disability-Owned Business Enterprise Certification also enters companies into the USBLN DSDP database of certified suppliers, which helps match DSDP Corporate Partners to potential vendors. Certified disability-owned businesses are able to attend USBLN corporate matchmaking and educational events designed specifically for certified businesses. In short, certification helps businesses be at the right place at the right time when it comes to meeting potential customers.

Certification is a credential that opens doors and grants access to supplier diversity advocates within corporations and government entities. Supplier diversity advocates assist businesses that have obtained a diversity certification in assessing the availability of opportunities within the organization and often make key introductions for businesses that are a good fit for their purchasing needs, for example, by making sure they are aware of open RFPs. Additionally, many corporations have mentorship, leadership, and educational programs specifically for certified businesses to promote equal access to business opportunities.

Businesses also use certification to differentiate their firms from their competition. In a corporate procurement process, if two companies are offering a similar product at a similar price, certification could be one more factor in a vendor's favor in a competitive bidding process. A company that can brand itself as a certified diverse-owned company can be the favorable difference-maker between it and its closest competition.

Another key benefit of certification is that it is valued by major corporations and government entities. Corporate Partners can rely on the Disability-Owned Business Enterprise Certification and assume that the business is truly owned by an individual or individuals with a disability. Obtaining certification takes time and discipline. As a result, certification is

an indication that a business conducts itself professionally and is able to meet the high expectations and standards of the certification process.

Certification also allows businesses to connect with collaborative partners. Certification provides a business connection to a network of other businesses that have obtained Disability-Owned Business Enterprise Certification, which is an avenue to partners for collaboration and strategic alliances. By purchasing from and selling to other businesses that have been certified, the community strengthens its economic power.

And finally, by becoming certified, businesses become a part of a growing movement that demonstrates the economic power of individuals with disabilities.

Why Do Corporations Participate?

Major corporations value inclusion of disability-owned businesses based on a business case that indicates inclusive procurement practices positively influence the position of a corporation within the larger community. With recent U.S. Census data indicating that one in five Americans is a person with a disability, and 30 percent of the nation's 69.9 million families have at least one member with a disability, corporations view the disability community as a viable and large marketing segment. Corporations recognize that their potential customer base is further saturated with individuals who support the disability community, as 25 percent of all customers either have a disability or have a close friend or relative who has a disability. As individuals with a disability continue to coalesce into an economic and social power, corporations realize capturing the brand loyalty of these consumers is a solid strategy for increasing sales within this segment.

Thus, including people with a disability in every aspect of the operations of a corporation, from marketing, to employing, to purchasing, has become increasingly important. Corporations partner with the USBLN DSDP to access a reliable source for

identifying potential suppliers that are disability-owned businesses, including businesses owned by service-disabled veterans. Corporations that join the USBLN DSDP receive access to the list of certified disability-owned businesses, recognition as a Corporate Partner of the DSDP, matchmaking opportunities at USBLN procurement events, and access to best practices in working with certified disability-owned businesses.

Advising Clients About Certification

From starting up, to reorganizing, to dealing with legal matters, business owners turn to legal counsel for advice on how to properly establish their business, avoid liability, and create a strong foundation for growth and development. Lawyers are sources of information and advice for business owners, and sharing knowledge about certification programs can help your clients become more aware of the benefits of certification. When you are

also the requirements of operation, management, and control. Businesses applying for certification sometimes encounter problems within the process due to the use of boilerplate governance documents.

From a legal perspective, meeting the criterion for ownership is fairly straightforward. For sole proprietors, sole-member LLCs, and single-shareholder corporations, the individual must meet the diverse status requirement of the certification. For the USBLN DSDP, a corporation is eligible for certification if at least 51 percent of each class of voting stock outstanding and at least 51 percent of the aggregate stock outstanding are held by a person with a disability. Similarly, partnerships and LLCs must have 51 percent of the interests of the company held by an individual with a disability, and risks, profits, and benefits assumed by the ownership of the company must be commensurate with the percentage of ownership interest.

To advise your clients with the most up-to-date information, visit the following websites to view the standards and procedures for each certification program.

- ▶ National Gay & Lesbian Chamber of Commerce: www.nglcc.org
- ▶ National Minority Supplier Development Council: www.nmsdc.org
- ▶ US Business Leadership Network: www.usbln.org
- ▶ Women's Business Enterprise National Council: www.wbenc.org

working with clients in establishing or reorganizing their business, you may want to keep a client's eligibility for certification in mind.

Governance documents hold critical details about the function of the business, and can impact eligibility for certification as a diverse business in more ways than many business owners realize. During the DSDP review process for an applicant business, a certification committee carefully reviews the governance documents of an applicant to ensure the company not only meets the requirements of ownership by an individual with a disability, but

Businesses held in a trust can be eligible for USBLN DSDP certification. In an irrevocable trust, the beneficial owners of securities must be an individual with a disability who is not a minor, and all trustees must be individuals with a disability or a financial institution. In a revocable trust, the beneficial owner of the securities held must be a person with a disability who is not a minor, all the grantors must be individuals with a disability, and all the trustees must be individuals with a disability or a financial institution. ESOPs are also eligible for certification provided all the trustees are a person

with a disability or a financial institution. Businesses held as a trust must also meet all the other requirements for ownership, operation, management, and control.

Looking beyond ownership, the certification committees also review the composition and the functioning of the governing body of the business to determine the extent to which the board of directors or management committee causes the direction and forms the policies of the company. A person with a disability must hold the highest defined office within the governance documents of the company, regardless of what the title is. If a person with a disability is the CEO, but the highest defined office within the corporation's bylaws is "president," the company will likely be denied certification.

Voting agreements of a firm also impact the control criterion. Agreements must not restrict or dilute the benefits or rights associated with the ownership interest of the company held by an individual with a disability. For example, within corporate bylaws, if an individual with a disability owns the majority of the issued stock, he or she should not be restricted in his or her ability to transfer stock, to enter bind-

specific considerations that can impact their eligibility for certification. Any affiliate, subsidiary, or franchise agreement undergoes specific review procedures outlined by the certification agency, and is examined to determine the management and operational authority of the business ownership.

Is Certification Right for My Client?

There are several different questions you should recommend a client consider before initiating the certification process. Good questions to ask include

- *Does your business meet the requirements for ownership and operation by one or more persons with disability (minority, woman, or LGBT) status?* Review the requirements and definitions carefully to help ensure a positive certification outcome. The Certification Committees consider all evidence presented in an application when making a certification decision, so one negative answer does not necessarily make a business ineligible. If you have questions regarding specific criteria, contact the certifying agency.

- *Does your company have the capacity to fill large contracts while maintaining quality?* Corporations and government agencies expect their suppliers to maintain high standards of quality while

including financial and governance documentation, with a third-party agency?

The USBLN places a high priority on maintaining the confidentiality of the documents submitted by applicants. In order to identify an applicant's eligibility for certification, the Certification Committees require detailed information about the business. To serve on a Certification Committee, committee members must sign a nondisclosure agreement and are expected to follow strict ethical standards. If a business owner is unwilling to furnish all requested documentation, the business may be denied certification. The various certification organizations all have different requirements regarding disclosure, so check with the certifying agency for confidentiality information.

- *Are you prepared to incorporate the certification into a multipronged, long-term strategy for new business development?* Understanding that certification is not a guarantee for or entitlement to a contract is critical to being successful in using the certification. In order to win new business with a certification, a business owner must research appropriate opportunities within corporations, build relationships with procurement representatives, and be patient. There are many opportunities, but there are also many businesses competing for each one. Certification may get a business in the door, but strong research, relationships, and internal practices are necessary to seal the deal.

Conclusion

As supplier diversity programs continue to grow, they will create many more opportunities for minority, women, LGBT, and disability-owned businesses. With a strong knowledge of best practices in supplier diversity, you can harness the innovation and agility of certified diverse vendors and embrace diversity as a critical component of business. By encouraging involvement with certifying agencies, you can help your clients and your firm succeed in a marketplace where diversity and inclusion are increasingly linked to the bottom line.

How Do I Get My Law Firm Certified?

Law firms are eligible for certification under the USBLN DSDP as well as the other certifications that exist for diversity-owned businesses. If your firm meets the criteria, obtaining certification may benefit your business. Visit the websites listed in the sidebar above for information on how to initiate the application process.

ing agreements on behalf of the company, or to exercise any other privilege associated with having title stock ownership. Voting agreements that restrict the decision-making authority of the business owner with a disability or require consensus among all shareholders can be found to be unduly restrictive and therefore could result in a denial of certification.

Businesses that have subsidiaries, affiliates, or franchises also have

meeting project specifications, often on a very large scale. Having flexible production and staffing capacity is a common requirement for many corporate opportunities. If a company is small, consider the possibility of building strategic alliances with other businesses that have obtained certification from the same program before going after large corporate contracts.

- *Are you willing to share detailed information about your company,*