

Approved by Raleigh Lewis

Language shown in bold is being added.

Language shown in [brackets and strikethrough] is being deleted

445-050-0115

Eligibility Standards

(1) To be eligible for certification as an ESB, a business must meet all the following criteria:

(a) A firm must be in existence, operational and in business for a profit;

(b) Have average, annual gross receipts over the last three years not exceeding ~~[\$1 million]~~ **\$1.5 million** for tier one construction firms and ~~[\$300,000]~~ **\$600,000** for tier one non-construction firms; and **\$3 million** for tier two construction firms and **\$1 million** for tier two non-construction firms.

(c) **The department will adjust annually the amount of the average annual gross receipts required to qualify as a tier one firm or a tier two firm using the most recent three-year average of the Portland-Salem Consumer Price Index (CPI) for All Urban Consumers for All Items, as reported by the United States Bureau of Labor Statistics.**

(d) If a tier one firm provides compelling information showing, in the judgment of the Department of Consumer and Business services, that the firm has not been afforded an opportunity to bid on emerging small business projects during a year of eligibility, the department will extend the tier one designation of the firm for an additional year. A tier one firm may receive the extension only once.

~~(e)~~ (e) Have its principal place of business located in the State of Oregon, as determined by tax filing status;

~~(f)~~ (f) Be independent. An ESB is not eligible if it is a subsidiary ~~of~~ or ~~its~~ parent company ~~belongs~~-**belonging** to a group of firms ~~which that~~ are owned ~~and or~~ controlled by the same individuals ~~which have if, in the aggregate, annual gross receipts in excess of the amounts set out in (b); the group of firms does not qualify as a tier one firm or a tier two firm.~~

~~(g)~~ (g) Be properly licensed and if required, legally registered in this state: (e.g., registered as a domestic corporation or partnership, assumed business name filed, Construction Contractors Board registration, etc.);

~~(h)~~ (h) Have **fewer than [19] 20** full-time equivalent employees **in tier one and have fewer than 30 full-time equivalent employees in tier two**. A full-time equivalent employee is calculated as follows:

(A) Hours worked by part-time and seasonal employees shall be converted into full-time equivalent employee hours by dividing the total hours worked by all part-time and seasonal employees by 2080.

(B) The owners of the firm shall not be considered full-time equivalent employees.

(C) The year period during which full-time equivalent employees shall be calculated shall be the same period as the ESB's tax year.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0115; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00

445-050-0125

Application Form and Procedure

(1) OMWESB will utilize ORS 200.005 to review for eligibility for certification as an ESB **tier one or tier two**.

(2) Application Form. Firms wishing to be certified as ESBs shall complete the application form provided by OMWESB.

(3) Submittal of application. The completed application form, together with all required supporting documentation, shall be submitted to the Office of Minority, Women and Emerging Small Business, 350 Winter St NE, Salem, OR 97309-0405.

(4) Processing applications. The OMWESB will conduct a review and take action on completed applications as promptly as its resources permit. The order of priority for processing applications shall be the date received by OMWESB.

(5) Determination. The OMWESB shall make a determination based on the eligibility standards included in this chapter and the applicable laws of the State of Oregon. As part of its investigation, OMWESB may require owners to provide information in addition to that requested on the application forms. The applicant has the burden of proving that it is eligible for certification and re-certification at all levels of review. Applicants shall be notified by mail promptly after a decision has been made. Where the OMWESB has denied an application, the letter shall set forth the specific reasons for the denial. Certification may be revoked at any time if the OMWESB determines that the ESB no longer meets the eligibility standards. The ESB shall notify OMWESB within 30 days of any changes in its ownership which may affect its continued eligibility as an ESB. Failure to notify OMWESB may result in denial/decertification.

(6) Submittal of Application. The completed application form, together with all required supporting documentation, shall be submitted by mail or in person to the Office of Minority, Women and Emerging Small Business, 350 Winter St. N.E., Salem, OR 97301-3878.

(7) The applicable emerging small business size standard for each applicant set out in OAR 445-050-0115(1)(b) shall be determined by the firm's primary area of work. Registration of the firm with Construction Contractors and/or Landscape Contractors Board will establish a firm as a construction firm. A construction-related trucking firm will also be considered a construction firm for the purposes of this program.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0125; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00

445-050-0135

Recertification

(1) Certification as an ESB is valid for three years from the date of certification.

(2) A recertification notice shall be sent to certified ESBs 60 days prior to expiration of current certification. The ESB shall promptly return the recertification application along with any requested documentation (e.g., evidence of change in ownership; federal tax returns for the last year, etc.). Recertification is not automatic. The

applicant must demonstrate that their business still meets the criteria set out in OAR 445-050-0105 through 445-050-0165.

(3) The signed and notarized recertification application shall be reviewed by the OMWESB staff to determine the ESB's continued eligibility. A request to verify information submitted to OMWESB may be required.

(4) Failure to return the completed recertification application by the expiration date shall result in administrative closure of the file.

(5) Firms may only be certified as an ESB for a maximum of ~~seven~~ **twelve consecutive** years from original certification date.

(6) An annual affidavit of "no change" will be sent to the firm approximately 30 days prior to the one-year and two-year anniversaries of the certification date. The completed affidavit, along with federal tax information for the previous year, and documentation of any changes, must be submitted prior to the anniversary date, or the firm will be decertified.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0135; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00