

DECLARATION OF EMERGENCY

Department of Economic Development Division of Economically Disadvantaged

Economically Disadvantaged Business Development
(LAC 19:I.Chapters 1-13)

In accordance with the Administrative Procedure Act, R.S. 49:950 et. seq., the secretary of the Department of Economic Development has adopted the following emergency rules for the Economically Disadvantaged Business Development Program as authorized by R.S. 51:1759. The secretary of the Department of Economic Development is exercising the emergency provision to publish these rules because of a recognized immediate need to provide small economically disadvantaged business with management, technical and financial assistance.

Without these emergency rules, the public welfare is likely to be harmed as a result of likely disruptions in the effective

growth and development of the economically disadvantaged business. Such developmental disruption would result in lower market productivity, diminished job creation and increased risk of higher unemployment. The proposed emergency rules are intended to mitigate the disruptions described above.

These emergency rules will be effective August 20, 1996, for 120 days or until a final rule is promulgated, whichever occurs first.

Title 19 CORPORATIONS AND BUSINESS Part II. Economically Disadvantaged Business Development

Chapter 1. General Provisions

§101. Statement of Policy

In accordance with the Louisiana Economically Disadvantaged Business Act of 1996 (R.S. 51:1751 through 1765 and the provisions of the Administrative Procedure Act, R.S. 49:950-970 as amended) the Department of Economic Development, Division of Economically Disadvantaged Business Development, hereby adopts the following policies, rules and regulations relative to the Economically Disadvantaged Business Development Program, to be effective November 20, 1996. These regulations are both substantive and technical in nature, and are intended to specify the procedure for certification and as qualification for an economically disadvantaged business; to provide for bonding and other financial assistance; to provide for technical and managerial assistance; to provide for a business mentor-protege program; to recognize achievements for economically disadvantaged businesses; and to facilitate access to state agency procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

§103. Purpose

The purpose and intent of this Chapter is to provide the maximum opportunity for economically disadvantaged businesses to become competitive in a non-preferential modern economy. This purpose shall be accomplished by providing a program of assistance and promotion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

§105. Definitions

When used in these regulations, the following terms shall have meanings as set forth below:

Certification—verification that a business qualifies for designation as an economically disadvantaged business.

Division—the division of economically disadvantaged business development in the Department of Economic Development.

Economically Disadvantaged Business (EDB)—a small business organized for profit and performing a commercially useful function which is at least 60 percent owned and controlled by one or more economically

disadvantage persons and which has its principal place of business in Louisiana. A nonprofit organization is not an economically disadvantaged business for purposes of this Chapter.

Economically Disadvantaged Person—a citizen or lawful resident of the United States who has resided in Louisiana for at least one year and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such individual from successfully competing in the open market.

Executive Director—the director of the division of economically disadvantaged business development.

Firm—a business that has been certified as economically disadvantaged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

§107. Eligibility Requirements for Certification [R.S. 51:1751, 52(3)(4), 1754]

An Economically Disadvantaged Business (EDB) is a firm that is owned and controlled by one or more Economically Disadvantaged individuals and meets the requirements of economic disadvantaged businesses. Eligibility requirements fall into two categories that apply to the individual owners and to the applicant's firm. In order to continue participation in the Program, a firm and its individual owners must continue to meet all eligibility requirements.

1. Economically Disadvantaged Persons. For purposes of the program, a person who meets all of the criteria in this section shall be defined as an *Economically Disadvantaged Individual*.

Citizenship—the person is a citizen or lawful permanent resident of the United States.

Louisiana Residency—the person has resided in Louisiana for at least one year.

Net Worth—each individual owner's personal net worth may not exceed \$250,000. The value of an individual's personal residence and his/her investment in the applicant firm will be excluded when calculating individual personal net worth for the EDB program.

Income—each individual owner must submit personal Federal Income Tax Returns for the past three years.

2. Economically Disadvantaged Business

Business Annual Gross Revenue—a business's annual gross revenue may not exceed the Louisiana EDB's size standards by SIC Code. Where the EDB program size standards utilize "number of employees" instead of a monetary figure, the Louisiana EDB Program shall use \$10.5 million in gross revenue as the qualifying monetary standard.

Business Net Worth—the business' net worth at the time of application may not exceed \$750,000. The division may waive this requirement only in those instances where the business seeking certification is in a capital intensive business.

Business Size—for purpose of Louisiana's EDB program, an eligible firm's size shall be defined as 50 percent or less of the published U.S. Small Business Administration's size standards by SIC codes.

Diminished Capital and Credit—a firm will be considered to have diminished capital and credit if its ability to compete in the free enterprise system has been impaired due to diminished capital and credit, opportunities as compared to other firms in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such firm from successfully competing in the open market.

i. Examples of diminished capital and credit are lack of access to long-term financing or credit, working capital financing, equipment trade credit, raw materials, supplier trade credit, and bonding.

ii. The applicant must furnish documentation that credit was denied on at least three occasions or separate applications for each area of credit that applies to the firm's type of business, condition, or situation.

iii. Applicant firms that score poorly on all financial measurements published by the Robert Morris Associates for liquidity, leverage, operating efficiency and profitability are considered to be economically disadvantaged. Factors to be considered are:

- (a). business assets;
- (b). net worth;
- (c). income;
- (d). profit.

iv. The latest revision of the Annual Statement Studies, published by Robert Morris Associates (the "RMA"), factors to be compared are:

- (a). current ratio;
- (b). quick ratio;
- (c). inventory turnover;
- (d). account receivable turnover;
- (e). sales to working capital;
- (f). debt-to-net worth ratio;
- (g). return on assets;
- (h). percentage return on investment;
- (i). percentage return on sales.

Full Time—managing owners who claim economically disadvantaged status must be full time employees of the applicant firm.

Job Creation—an applicant firm must have a minimum of at least two full-time employees. A waiver may be granted for this requirement dependant upon the firm's plans for expansion.

Lawful Function—the company has been organized for profit to perform a lawful, commercially useful function.

Ownership and Control—at least 60 percent of the company must be owned and controlled by one or more Economically Disadvantaged Individuals.

Principal Place of Business—the firm's principal place of business must be Louisiana.

3. Documents Required for Certification. The application shall be supported by but not limited to the following documents:

- a. business's balance sheet and income statement;
- b. verification of signatories on bank accounts;
- c. copies of income tax returns;
- d. resumes of owners and top managers;
- e. copies of business licenses and permits;
- f. copies of stock certificates, stock transfer ledgers, and articles of incorporation if business is a corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

§109. Control and Management

Description. An applicant concern's management and daily business operations must be controlled by an owner(s) of the applicant concern who has/have been determined to be economically disadvantaged. In order for a disadvantaged individual to be found to control the concern, that individual must have managerial or technical experience and competency directly related to the primary industry in which the applicant concern is seeking program certification.

1. The economically disadvantaged individual(s) upon whom eligibility is based shall control the Board of Directors of the concern, either in actual numbers of voting directors or through weighted voting.

a. In the case of a two-person Board of Directors where one individual on the board is disadvantaged and one is not, the disadvantaged vote must be weighted by share ownership, worth more than one vote to achieve a minimum of 60 percent control, in order for the concern to be eligible for the program. This does not preclude the appointment of non-voting or honorary directors.

b. All arrangements regarding the structure and voting rights of the board must comply with state law and with the concern's Articles of Incorporation and/or By-Laws.

2. Individuals who are not economically disadvantaged may be involved in the management of an applicant concern and may be stockholders, partners, officers, and/or directors of such concern. Such individual(s), their spouses or immediate family members who reside in the individual's household may not, however:

- a. exercise actual control or have the power to control the applicant or certified firm;
- b. be an officer or director, stockholder, or partner of another firm in the same or similar line of business as the applicant or certified firm;
- c. receive excessive compensation as directors, officers, or employees from either the applicant or certified concern. Individual compensation from the concern in any form, including dividends, consulting fees, or bonuses, which is paid to a non-disadvantaged owner, his/her spouse or immediate family member residing in the same household will be deemed excessive if it exceeds the compensation received by the disadvantaged chief executive officer, president, partner, or owner, unless the compensation is for a clearly identifiable skill

for which market rates must be paid for the firm to utilize the person's expertise;

d. be former employers of the economically disadvantaged owner(s) of the applicant or certified concern, unless the division determines that the contemplated relationship between the former employer and the disadvantaged individual or applicant concern does not give the former actual control or the potential to control the applicant or certified firm and if such relationship is in the best interests of the certified firm.

3. Non-disadvantaged Control. Non-disadvantaged individuals or entities may not control, or have the power to control, the applicant firm. Examples of activities or arrangements which may disqualify an applicant firm from certification are:

a. a non-disadvantaged individual, such as an officer or member of the Board of Directors of the concern, or through stock ownership, has the power to control daily direction of the business affairs of the concern;

b. the non-disadvantaged individual or entity provides critical financial or bonding support or licenses to the concern, which directly or indirectly allows the non-disadvantaged individual to gain control or direction of the concern;

c. a non-disadvantaged individual or entity controls the corporation or the individual disadvantaged owners through loan arrangements;

d. other contractual relationships exist with non-disadvantaged individuals or entities, the terms of which would create control over the disadvantaged concern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

§111. Responsibility for Applying [R.S. 51:1755(B)]

A. It is the responsibility of any business wishing to participate in the program to complete the required certification process and to provide all the information requested. Failure to provide complete, true, or accurate data may result in rejection of the application to participate in the program.

B. Certification materials will be distributed by the division upon written or verbal request. Written requests for certification materials should be directed to the Division of Economically Disadvantaged Business Development, Baton Rouge, LA 70804.

C. Certification as an economically disadvantaged business does not constitute compliance with any other laws or regulations and does not relieve any firm of its obligations under other laws or regulations. Certification as a disadvantaged business also does not constitute any determination by the division or that the firm is responsible or capable of performing any work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

§113. Certification Application Procedure (R.S. 51:1753(4), 1755)

A. Applicant firm submits a completed certification application and supporting documents to the division.

B. The division reviews the certification application. If it is incomplete or further information is needed, the division will contact applicant. If the applicant does not respond within 15 days, the application will be denied.

C. The division shall conduct a site visit at the firm's place of business, prior to certification.

D. Information obtained from the site visit is added to the file and a written recommendation is made to the division's executive director.

E. The executive director notifies the applicant in writing of the decision whether or not to grant certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

§115. Duration of Certification [R.S. 51:1755(E)]

A. The maximum amount of time that a firm may be granted certification by the division is seven years.

B. Retention of the firm in the program depends upon time, the firm's progress toward attainment of its business goals, willingness or ability to cooperate and follow through on recommendations of the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

§117. Reports By Certified Economically Disadvantaged Businesses [R.S. 51:1757]

A. Report Form. On forms identified or prescribed by the division, certified businesses shall report at times specified by the division their financial position and attainment of the business' performance goals.

B. Verification of Eligibility. The division may take any reasonable means at any time to confirm a certified concerns eligibility, such as by letter, telephoned contact, contact with other governmental agencies, persons, companies, suppliers, or by either announced or unannounced site inspection.

C. Notification of Changes. To continue participation, a certified firm shall provide the division with a notarized statement of any changes in address, telephone number, ownership, control, financial status, or major changes in the nature of the operation. Failure to do so may be grounds for termination of eligibility.

D. Evaluation. The division, at such times it deems necessary, shall evaluate the information to determine progress, areas for further improvement, resources needed by the firm, and eligibility for continued participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

Chapter 3. Developmental Assistance Program

§301. Developmental Assistance [R.S. 51:1753(B)(3)]

A. Purpose. The division will coordinate technical, managerial, and financial assistance through internal and external resources to assist certified economically disadvantaged businesses to become competitive in their markets.

B. Developmental Steps

1. The division will conduct a preliminary analysis of the firm's situation to determine its strengths and weaknesses.

2. Determination of Assistance. In consultation with the division's staff, the business owner will determine areas in which he/she needs assistance.

3. Referral to Additional Resources. The division will assist the firm obtain intensive technical or managerial assistance from other resources, such as small business development centers, procurement centers, consultants, business networks, professional business associations, educational institutions, and other public agencies. The Small Business Development Centers shall be the point of entry for such assistance.

C. Ongoing Evaluation. In conjunction with the economically disadvantaged firm and appropriate external resources, the division will periodically assess the EDB's progress toward attainment of its business goals. The division, in conjunction with the EDB firm, will determine the effectiveness of assistance being administered. If assistance is ineffective, the division will investigate and take appropriate action.

D. Graduation from the Program. After a pre-agreed performance or time has been reached, or combination of the two, the EDB will graduate from the Program. Companies that do not make satisfactory progress will be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

Chapter 5. Mentor-Protege Program

§501. Mentor-Protege Program [R.S. 51:1753(B)(6)]

Purpose. The division shall design and conduct a business mentor-protege program to bring non-economically disadvantaged businesses into a systematic working relationship with a certified economically disadvantaged business for their mutual, commercial benefit and for the development of the protege firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

Chapter 7. Recognition Program

§701. Recognition [R.S. 51:1753(B)(7)]

Purpose. The division will publicly recognize outstanding accomplishments or contributions from economically disadvantaged businesses, public agencies, and non-economically disadvantaged firms. Companies and agencies that would be recognized include:

1. EDB Graduates. Economically disadvantaged businesses which graduate from the program by reaching their goals.

2. Outstanding EDB Firms. Economically disadvantaged companies which demonstrate outstanding performance beyond reaching their goals or which showed unusual effort, persistence, quality service or

products, or creativity at overcoming obstacles.

3. Cooperative Agencies. Public agencies that show exceptional cooperation or success in working with economically disadvantaged companies.

4. Cooperative Non-EDB Firms. Companies in the private sector that demonstrate unusual efforts at promoting or buying from economically disadvantaged businesses or have been outstanding mentors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

Chapter 9. Small Business Bonding Program

§901. Small Business Bonding Assistance [R.S. 51:1753(B)(8)]

A. Program Activities. Louisiana Contractors Accreditation Institute: (LCAI)

1. Eligibility. All economically disadvantaged business construction contractors who are certified by the Division of Economically Disadvantaged Business Development, Department of Economic Development, are eligible to attend the institute. However, other contracting businesses will be invited to attend the institute but they will not be able to receive the grant assistance or bond guarantee until they have been certified by the Economically Disadvantaged Business Development Program.

2. Standards and Procedures for Determining Course Content. The director of Bonding Assistance Program (BAP) will once a year consult with the heads of the construction schools in Louisiana approved by the Board of Regents and Department of Education to ensure that current course content adequately prepares the students to run their construction firms in a businesslike manner.

3. Attendance. Attendance is open to only certified or potentially certified economically disadvantaged business construction contractors. However, contractors must register for institute he or she wish to attend. Each contractor who successfully completes the LCAI will be issued a certificate of accreditation which qualifies them to receive the grant assistance and bond guarantee phases of the program.

4. Accreditation without Institute Attendance. An EDB firm may request to be accredited without attendance. The director of the BAP will conduct a review of the firm. If the contractor can present evidence he conducts business within standards set by best practices, the director may issue accreditation to the firm.

5. Accreditation by Test Only. Should the accreditation in Subsection D, supra, be denied, the firm may gain an accreditation without attending the institute by obtaining an acceptable score on the test administered during the institute.

6. Grant Assistance:

a. Eligibility. The primary goal of the Bonding Assistance Program (BAP) is to increase the number of bonds received by Economically Disadvantaged Business (EDB) on reasonable terms. Toward this end, certified economically disadvantaged business contractors are eligible to receive the grant assistance provided for by these rules. All EDB contractors will be deemed to have the required level of capability necessary to be eligible for professional assistance if they are accredited pursuant to §501 C, D, or E of these rules. The contractor must demonstrate economic need.

b. Method of receiving the grant assistance. An accredited contractor is automatically eligible to receive the grant assistance upon successfully completing the LCAI courses and agreeing to the following:

i. to participate in surveys designed to evaluate the effectiveness of the services received and to assure that the services were adequately performed;

ii. they authorize BAP to furnish relevant information to the assigned professional;

iii. they waive all claims against BAP, the Department of Economic Development, and the State of Louisiana arising from this assistance.

7. Eligible Professionals. The professionals selected to deliver the services will be mutually agreed upon by the contractor, the local Small Business Development Center (SBDC) and Director of the BAP.

8. Successful Completion of Contract. The Local SBDC's procurement policies and procedures along with AP's evaluation process will be used to monitor contract performance. The SBDC will allow DED personnel to inspect all relevant files.

B. Direct Bonding Assistance. All certified economically disadvantaged businesses that have been accredited by the LCAI may be eligible for surety bond guarantee assistance from the Louisiana Economic Development Corporation (LEDC). Such assistance will be provided in accordance with rules promulgated by LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically

Disadvantaged Business Development, LR 22:

Chapter 11. Promotion of Economically Disadvantaged Businesses

§1101. Promotion [R.S. 51:1753(B)(2)]

A. Directory

1. **Compilation.** The division shall compile a directory of all certified economically disadvantaged businesses and make it available to the businesses and governmental agencies.

2. **Frequency of Publication.** The directory shall be updated at least annually, based upon information provided by certified businesses. The division may issue updated directories more frequently.

3. **Volume and Distribution.** At least one copy of the directory will be made available to each state agency and educational institution, and copies will be provided to the State Library. Additional copies may be made available to the public and governmental agencies as division's resources permit.

4. **Available Information.** Public information concerning an economically disadvantaged business may be obtained by contacting the Division of Economically Disadvantaged Business Development during normal working hours.

B. Other Promotional Means. The division will utilize other feasible means of promoting economically disadvantaged businesses, such as, but not limited to, the Internet, world wide web, electronic bulletin boards, trade shows, or private sector contacts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

Chapter 13. Complaints and Investigations

§1301. Complaints and Investigation of Ineligibility [R.S. 51:1760]

A. Right To File Complaint. Any individual, firm, or governmental agency which believes that a certified business does not qualify for certification may file a written, signed complaint with the division. The complaint must contain sufficient information for division to conduct an investigation, including specific identification of the affected business, basis for the charge of ineligibility, and identification, mailing address, and telephone number of the complainant.

B. Right to Due Process. No disadvantaged business shall be decertified based upon a complaint, without first having had an opportunity to respond to the allegations. However, failure of the disadvantaged business to respond to the division's notification within 30 calendar days of mailing from the division may result in revocation of certification.

C. Investigative Procedure (R.S. 51:1760)

1. **Notification of Allegation.** The division shall notify the certified business which is subject of the complaint by certified mail, return receipt requested, of the allegation within 15 calendar days of the complaint's receipt.

2. **Investigation Conducted.** Within available resources, the division shall investigate each complaint as promptly as possible. In no event shall the investigation extend beyond 60 calendar days from the date that the complaint was received.

3. **Cooperation.** The disadvantaged business enterprise shall cooperate fully with the investigation and make its staff and records available to division if requested. Insufficient cooperation may be grounds for concluding that the firm has not borne the burden of proving to the satisfaction of the division that it is eligible for certification, resulting in revocation of certification.

4. **Upon completion of the investigation,** the division's executive director shall make a determination and issue a written decision which either rejects the complaint or revokes the certification within 10 working days. A copy of the written decision shall be sent to the firm that was subject of the complaint, the complainant, and the director of the Office of State Purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

§1303. Grounds and Procedure for Reconsideration of Denial [R.S. 51:1762]

A. Right to Petition. A decision by the division to deny issuing certification, deny renewal of certification, or to revoke certification will be reconsidered after an applicant business has submitted a written petition for reconsideration to the executive director of division.

B. Grounds. Grounds for petitioning division to reconsider a denial or revocation of certification are that the Division of Disadvantaged Business Enterprise:

1. did not have all relevant information;
2. misapplied its rules;
3. otherwise made an error in reaching its original decision.

C. Right to Petition for Reconsideration. A petitioning business may appeal division's decision to deny issuance of certification, to deny recertification, or to revoke certification. Only a firm which is subject of the denial or revocation has a right to petition for reconsideration.

1. Petition Submitted. The appellant business submits a written petition for reconsideration to the division's executive director. If the petition has not been received by the division within 30 days of the date of the letter announcing the denial or revocation, the division's decision becomes administratively final.

2. The petition shall specify grounds upon which a reconsideration is justified and the type of remedy requested. The petition for reconsideration must also clearly identify a contact person, mailing address, telephone number. The petitioning firm may provide any additional information which would be pertinent to the issue.

3. Acknowledgment. Upon receiving a petition for reconsideration, division shall acknowledge its receipt by sending certified mail, return receipt requested, to the petitioner within five working days.

4. Reconsideration. The division shall consider the petition and review all pertinent information, including additional information provided by the appellant business. Division may conduct further investigation as necessary.

5. Notification of Decision. No later than 60 calendar days from receipt of the petition for reconsideration, the division shall notify the petitioner by certified mail, return receipt requested, of its decision either to affirm the denial or revocation, with specific reason(s) of the grounds for the decision.

D. Final Decision. A decision to deny, revoke, or suspend certification following consideration of a petition for reconsideration is final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Division of Economically Disadvantaged Business Development, LR 22:

Henry J. Stamper
Executive Director

9608#016