

### *Purpose and Summary*

Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to rescind Chapter 52 and adopt a new chapter in lieu thereof. The chapter describes the policies and procedures by which the Authority certifies targeted small businesses (TSBs).

### *Analysis of Impact*

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Persons interested in applying for certification or recertification as a TSB will bear the costs of the rulemaking.

- Classes of persons that will benefit from the proposed rulemaking:

Persons interested in applying for certification or recertification as a TSB will benefit from the rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Entities interested in applying for certification may require staff time to complete an application for certification or recertification. Some applicants may choose to rely on an external service provider to complete these tasks. The amount of the costs will vary, depending on the compensation of staff or service providers involved.

- Qualitative description of impact:

Certified TSBs are eligible for technical and financial assistance from the Authority. Certified TSBs are also entitled to early access to contracting opportunities and are utilized by various entities subject

to the Targeted Small Business Procurement Act (Iowa Code chapter 73, subchapter III) to meet TSB procurement goals.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Authority staff time is required to review applications for certification and recertification and to provide technical assistance to TSBs.

- Anticipated effect on state revenues:

The proposed rules have no anticipated impact on state revenues. The Authority is directed to adopt rules for certification of TSBs by Iowa Code section 15.108(6).

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Only the businesses that will benefit from certification as TSBs bear the costs of the rulemaking.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Authority has not identified any less costly methods or less intrusive methods for administering the certification program.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency: The Authority did not consider any other methods.
- Reasons why alternative methods were rejected in favor of the proposed

rulemaking: The Authority did not consider any other methods.

#### *Small Business Impact*

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking impacts only small businesses seeking certification or recertification as TSBs. The rules require recertification every two years to ensure businesses benefiting from their status as certified TSBs remain eligible for certification. The rules do not establish reporting requirements, schedules, or deadlines. The rules do not establish design or operational standards.

#### *Text of Proposed Rulemaking*

ITEM 1. Rescind 261—Chapter 52 and adopt the following **new** chapter in lieu thereof:

### CHAPTER 52

#### IOWA TARGETED SMALL BUSINESS CERTIFICATION PROGRAM

##### **261—52.1(15) Definitions.**

“*Authority*” means the same as defined in Iowa Code section 15.102(1).

“*Act*” means the Iowa targeted small business procurement Act codified in Iowa Code chapter 73, subchapter III.

“*Certification*” means the process that identifies small businesses as targeted small businesses and as eligible for technical assistance.

“*Disability*” means the same as defined in Iowa Code section 15.102.

“*Minority person*” means the same as defined in Iowa Code section 15.102.

“*Program*” means the targeted small business certification program described in this chapter and

261—Chapter 54.

*“Service-disabled veteran”* means a veteran who provides written verification from the Veterans Administration or the U.S. Department of Defense of a disability that was incurred or aggravated in the line of duty in active military, naval, air, or space service.

*“Targeted group person”* means a minority person, woman, person with a disability, or service-disabled veteran who is either an Iowa resident or a resident of a contiguous state who lives within 50 miles of the targeted small business the person owns, operates, and actively manages.

*“Targeted small business”* or *“TSB”* means the same as defined in Iowa Code section 15.102.

*“Woman”* means any female 18 years of age or older.

**261—52.2(15) Certification.**

**52.2(1)** A business must be certified as a targeted small business by the authority to participate in the program. Businesses seeking certification shall submit an application to the authority in the form and content required by the authority. The application will include information to establish whether a business meets the eligibility criteria of the program. An authorized representative of the business shall sign the application and an authorization to release information. Applications may be requested by contacting the authority or by visiting the authority’s website.

**52.2(2)** The authority reviews applications to determine whether a business is eligible to participate in the program pursuant to this chapter as in effect as of the date of application for certification. The authority will notify applicants in writing of its decision.

**52.2(3)** Certified businesses shall submit verification of continued eligibility to the authority at least every two years. The application for recertification will be provided by the authority. The authority will determine whether a certified business is eligible for recertification pursuant to this chapter as in effect as of the date of application for recertification.

**52.2(4)** A business that fails to provide any supplemental information requested by the authority may be denied certification or recertification.

**52.2(5)** Any business that is denied certification or decertified may reapply. The business bears the burden of demonstrating eligibility.

**52.2(6)** A certified business shall notify the authority within 30 days following a change in ownership or control of a certified business or if the targeted group person no longer actively manages the business. The notice must be accompanied by sufficient documentation to determine whether the business continues to be eligible for certification. The authority may require a business to submit a new application following a change in ownership, control, or management.

**261—52.3(15) Eligibility.** The authority will consider the following to determine whether a business is a targeted small business pursuant to Iowa Code section 15.102(12) and eligible for certification. Documentation may be required to prove each eligibility requirement. The authority may conduct on-site audits to evaluate eligibility.

**52.3(1)** Ownership. The authority will evaluate the following factors that indicate independent ownership by a targeted group person.

*a.* The business shall not be a subsidiary of any other business. If another business that is not a TSB has an interest in a TSB applying for certification, the authority will scrutinize the relationship between the businesses to determine the independence of the TSB. Recognition of the business as a separate entity for tax or corporate purposes is not solely sufficient to demonstrate independence.

*b.* The targeted group person owner(s) shall enjoy the customary incidents and profits of ownership and share in the risks commensurate with the owner's ownership interest. The authority will consider the substance rather than the form of the arrangements. Business arrangements that deviate from common industry practice may indicate an owner other than the targeted group person owns, operates, and actively manages a business.

*c.* At least 51 percent of the members of the business's board of directors must be targeted group persons.

*d.* At least 51 percent of the shares or other units of ownership of the business must be owned by one

or more targeted group persons.

*e.* The business should be compensated for facilities, inventory, equipment, labor, or other items it owns and shares with any other business. Compensation shall not vary from common industry practice. If an applicant business is operated from the owner's residence, the residence and any adjacent outbuildings used by the applicant business may be owned jointly with other family members.

**52.3(2)** Decision-making authority and expertise. The targeted group person owner(s) shall have authority to incur liability and to decide financial and policy questions without any restrictions, either formal or informal.

*a.* The authority may review documents, including but not limited to minutes of board or owners meetings, bylaw provisions, operating agreements, certificates of organization, partnership agreements, charter requirements for cumulative voting rights, or employment agreements to determine the targeted group person's authority.

*b.* The targeted group person owner(s) shall make day-to-day decisions as well as major decisions on management policy and operation of the business. Authority to hire and to fire all personnel shall be vested in the targeted group person owner(s).

*c.* The authority will consider particular positions to determine who has major responsibility in a company. These people include but are not limited to those who:

- (1) Hold any applicable license;
- (2) Devote substantial time to the business;
- (3) Supervise or direct the supervision of management and field operations;
- (4) Manage financial affairs;
- (5) Prepare or approve bids or estimates;
- (6) Participate in price and bidding negotiations;
- (7) Make final decisions about staff and personnel;
- (8) Sign contracts and checks or authorize action on behalf of the business.

*d.* The targeted group person owner(s) must have an overall understanding of, managerial and technical competence in, and expertise directly related to the type of business in which the business is engaged and in the business's operations. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the activities of the business is insufficient to demonstrate control of the business.

**52.3(3)** Capital contributions. Capital contributions by the targeted group person owner(s) to acquire interest in the business shall be real and substantial and reflected in documents such as stock certificates, articles of incorporation, minutes of board or owners meetings, partnership agreements, or income tax returns.

**52.3(4)** Capital contribution, expertise, and experience in an inherited business are not required. All other requirements apply.

**52.3(5)** Businesses that are owned and operated by one or more members of the same family will be closely scrutinized to determine whether the targeted group person identified as the owner of 51 percent or more of the business sets policy and makes day-to-day and long-term decisions for the operation and management of the business.

**52.3(6)** A previous or continuing employer-employee relationship between present owners will be closely scrutinized to ensure that the employee-owner has substantial management and decision-making responsibilities.

**52.3(7)** A disabled targeted group person must provide certification of the disability from a licensed medical physician, physician assistant, or nurse practitioner with relevant expertise or must have been found eligible for vocational rehabilitation services by the department of workforce development, division of vocational rehabilitation services, or by the department for the blind.

**52.3(8)** The authority will calculate an applicant's gross income as follows: the total sales less the cost of goods sold plus any income from investments and from incidentals or outside operations or sources.

**261—52.4(15) Decertification.**

**52.4(1)** If the authority determines there is reasonable cause to believe a business does not comply with the requirements of the program, the authority shall provide written notice of the intent to revoke certification to the business. Notice shall be sent at least 20 days before decertification is effective.

**52.4(2)** The authority shall revoke certification of a TSB if the authority determines that a fraudulent practice related to the program has occurred. The authority or its representative may investigate allegations or complaints of fraudulent practices. A person is considered to have engaged in a fraudulent practice related to the program if the person does any of the following:

*a.* Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a targeted group person primarily for the purpose of obtaining benefits afforded only to TSBs if the transferor would otherwise not be qualified for such programs.

*b.* Solicits and is awarded a state contract on behalf of a TSB for the purpose of transferring the contract if the person transferring or intending to transfer the work had no intention of performing the work.

*c.* Knowingly falsifies information on an application for the purpose of obtaining benefits afforded only to TSBs.

**52.4(3)** A TSB may be decertified if the authority sends a letter by first-class mail to the last-known address provided to the authority by the TSB and it is returned as undeliverable.

**52.4(4)** Eligibility to participate in the program continues until the authority issues a final decision regarding decertification of a TSB.

**261—52.5(15) Waivers.** A targeted small business may seek a satisfaction, performance, surety, or bid bond waiver from a state agency pursuant to Iowa Code section 12.44. A TSB must provide a sworn statement and documentation from surety companies verifying that the TSB is entitled to a waiver pursuant to Iowa Code section 12.44.

**52.5(1)** The authority reviews all requests for waivers. The authority may request information to assist the review process from the state agency requiring a bond. An applicant for a waiver pursuant to this rule

and the agency requiring a bond will be notified of the decision in writing.

**52.5(2)** Waivers will be reviewed and renewed at the time of TSB recertification.

**261—52.6(15) TSB procurement.**

**52.6(1)** *TSB directory and purchases.* The authority compiles and regularly updates a TSB directory that contains a listing of TSBs that have been certified by the authority. Entities required to make purchases from TSBs pursuant to the Act utilize the directory to identify TSBs for purchases. By certifying a business, the authority does not represent that the business can perform any contract entered into by the business.

**52.6(2)** *Authority administration.* The authority may conduct a review of entities subject to the Act where there is evidence of little or no progress toward reaching its established TSB goal. The purpose of the review will be to identify the barriers encountered, evaluate the efforts taken to reach the goal, and provide available assistance.

**52.6(3)** *Reporting requirements.* The director of each state agency or department shall submit quarterly reports of TSB purchases to the authority in the format and by the due date specified by the authority. Reports provided to the department of education by community colleges, area education agencies, and school districts pursuant to Iowa Code section 73.17(2) shall be forwarded to the authority. Pursuant to Iowa Code section 73.17, the authority may require modifications from the agencies and departments based on the information reported pursuant to that Iowa Code section and this rule.

**52.6(4)** *Maintenance of records.* Entities subject to the Act shall develop a recordkeeping system that identifies and assesses TSB contract awards and progress in achieving a TSB goal. Records should demonstrate procedures adopted to comply with Iowa Code chapter 73 and this chapter and awards to TSBs. Records shall be available upon the request of the authority or the state auditor.

These rules are intended to implement Iowa Code sections 12.44 and 15.108(6) and chapter 73, subchapter III.