

## **Facts and Guidelines | *Minority Business Enterprise (MBE)***

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"Minority business enterprise" means an individual, partnership, corporation or joint venture of any kind that is owned and controlled by U. S. Citizens and residents of Ohio, who are and have held themselves out as members of the following socially and economically disadvantaged groups: African Americans, American Indians, Hispanics and Asians.

### **Eligibility**

In order to be certified as a MBE, the business owner(s) must be members of one or more of the following groups: African Americans, Native Americans, Hispanics and Asians.

The business must be a for-profit business entity.

The company must have been in business at least one year prior to applying for certification as a minority business enterprise. This requirement shall not apply to joint venture applicants.

The business must be at least fifty-one percent **owned and controlled** by one or more of the person(s) belonging to the following groups: African Americans, Native Americans, Hispanics and Asians for one year prior to applying for certification.

The person(s) claiming to be members of the following groups: African Americans, Native Americans, Hispanics and Asians must possess requisite knowledge of the business and industry in which he/she is applying.

The person(s) claiming to be members of the following groups: African Americans, Native Americans, Hispanics and Asians must have **day-to-day control** over the business and must exercise final authority over all aspect of the daily operation of the business including, but not limited to operations, financial, business management, human resources and policy decisions.

In addition to the requirements for minority business enterprise certification, any applicant desiring to bid on a contract awarded by any agency other than the department of administrative services must meet any pre-qualification requirements of that agency.

Demonstrated capability and/or expertise within classifications identified for a period of one year prior to certification.

Possession of all licenses, permits and authorities required by law to perform the scope of work within classifications requested.

### **Ownership**

An eligible MBE should be an independent business. The ownership and control by person(s) belonging to one or more of the following groups: African Americans, Native Americans, Hispanics and Asians should be real, substantial and continuing and should go beyond the pro forma ownership of the firm as reflected in it ownership documents. They should enjoy the customary incidents of ownership and should share in the risks and profits commensurate with their ownership interest as demonstrated both by examination of the substance and form of arrangements.

In determining whether a potential MBE is an independent business, the Equal Opportunity Division will consider all relevant factors, including the date the business was established, its resources and the nature of the financial, lease arrangements and other relationships the business enjoys.

The contributions of capital or expertise by minority owner(s) to acquire their interests in the firm should be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a

note payable to the firm or its socially and economically disadvantaged owner(s), or mere participation as an employee rather than as a manager.

If the minority business enterprise is a corporation, at least fifty-one percent of each class of corporate stock is owned by persons who belong to one or more of the following groups: African Americans, Native Americans, Hispanics and Asians.

If the minority business enterprise is a partnership, at least fifty-one percent of each class of partnership interest is owned by persons who belong to one or more of the following groups: African Americans, Native Americans, Hispanics and Asians.

If the minority business enterprise is a sole proprietorship, one hundred percent of the business is by persons who belong to one or more of the following groups: African Americans, Native Americans, Hispanics and Asians.

If the minority business enterprise is a joint venture, at least fifty-one percent of the joint venture is controlled by persons who have been previously certified as a minority business enterprise by the equal employment opportunity coordinator, that such persons have ultimate control over the management and day-to-day operations of the joint venture, and that such persons have an interest in the capital, assets, profits and losses of the joint venture proportionate to their percentage of control.

Part ownership in an applicant concern by non-minority persons is permitted and may be necessary to ensure adequate capital and management for the concern's development. However, any property, equipment, supplies, services and/or financial assistance or assistance which are sold, rented or donated to the minority business enterprise must be reported to the state equal employment opportunity coordinator on an annual basis.

### **Management / Operational Control**

If the minority business enterprise is a corporation, at least fifty-one percent of the members of the board of directors and fifty-one percent of the principal executive officers of the corporation are persons who belong to one or more of the following groups: African Americans, Native Americans, Hispanics and Asians and that the rights of any stock class to ultimate control of the management and day-to-day operations of the business and the interest of any stock class in the capital, assets, profits and losses of the business are proportionate to the stock ownership of that class.

If the minority business enterprise is a partnership, that person(s) who belong to one or more of the following groups: African Americans, Native Americans, Hispanics and Asians have ultimate control of the management and day-to-day operations of the business, and that such owners have an interest in the capital, assets, profits and losses of the business proportionate to their percentage of ownership.

If the minority business enterprise is a sole proprietorship, that person(s) who belong to one or more of the following groups: African Americans, Native Americans, Hispanics and Asians has the entire interest in the capital, assets, profits and losses of the business, not including mortgages and other types of financial arrangements secured by assets or bonds secured by revenues.

The minority owner(s) should possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as major decisions on matters of management, policy and operations.

If the actual management of the firm is contracted out to or otherwise has been placed with individuals other than the minority owner(s), those persons who have the ultimate power to hire and fire the managers will ordinarily be considered as controlling the business.

The minority owner(s) should demonstrate through the application sufficient experience, knowledge and expertise to operate that particular business. Additionally, if the owner(s) of the firm who are non-minority and are disproportionately responsible for the operation of the firm--to include possessing any required licensing for the firm--the firm will ordinarily be considered as not being controlled minority individuals and not qualifying as a MBE.

John R. Kasich, Governor  
Robert Blair, DAS Director

Securities which constitute ownership or control, or both, of a corporation for business purposes of establishing it as a minority business enterprise should be held directly by the minority owner(s). No securities held in trust, or by a guardian for a minor, should be considered as held by minority individuals in determining the ownership or control of a corporation.

A relationship between a MBE and a business which is not a MBE, which has an interest financially or otherwise in the MBE, will be carefully reviewed to determine if the interest of the non-MBE conflicts with the ownership and control requirements of the program.

An applicant concern's management and daily business operations must be controlled by an owner(s) of the applicant concern who has been determined to be members of one or more of the following groups: African Americans, Native Americans, Hispanics and Asians, and such owner(s) must own a greater percentage of the business entity than any other owner, or in case of a corporation, more voting stock than any other stockholder.

Individuals who are not members of one or more of the following groups: African Americans, Native Americans, Hispanics and Asians, who are stockholders, officers, directors or employees of an applicant for admission to the program shall not exercise actual, ultimate control or have the authority to control any aspects of the day-to-day operations, finances, or management decisions and management policies of the applicant business concern. The existence of control or authority to exercise control shall be determined by the facts of each case.

Individuals who are members of one or more of the following groups: African Americans, Native Americans, Hispanics and Asians must be the principal manager(s) of the applicant concern. Such person(s) must possess the requisite management capabilities to exercise control of the applicant. This precludes outside employment or other business interests by the individual which conflict with the management of the firm or prevent it from achieving the objectives of its business development plan. This requirement does not preclude employment of persons who are not members of one or more of the following groups: African Americans, Native Americans, Hispanics and Asians in the management of the applicant concern.

### **Approved Certification**

If the Department of Administrative Services, Equal Opportunity Division determines that the applicant meets the criteria to be certified as a MBE, the applicant will be issued a certificate in recognition of its status. Status as a minority business enterprise is subject to the continuing compliance of the business with MBE rules and regulations, and to review, at any time, by the equal employment opportunity coordinator.

The MBE certification will be granted for a period not to exceed two years.

The applicant shall be required to revise the application and information provided to the equal employment opportunity coordinator biannually. Such revisions shall also contain a yearly financial statement, all pertinent financial records and other financial documents as requested.

At the time of recertification a recertification affidavit, along with the business federal tax return shall be required. Recertification may include an on-site review at which time the MBE will be required to submit various statements including, but not limited to capability/eligibility statements and financial statements to ensure continued program eligibility.

Any change in the business structure of the enterprise, the ownership and control of the enterprise or the type of business conducted by a certified minority business enterprise, shall require a reapplication for certification and a review by the coordinator.

### **Certification Denial**

A business may be denied certification for any of the following reasons:

- (a) A demonstration that the business cannot show through convincing evidence the requisite level and degree of ownership and control.
- (b) A failure to meet any of the eligibility or certification criteria.

- (c) If an application for certification as a minority business enterprise is not approved by the equal employment opportunity coordinator, the applicant shall be notified by mail and shall have recourse to all of the available remedies contained in Chapter 119 of the Revised Code.

**Decertification**

The company that has been found to be in violation of any minority business enterprise program requirements shall be subject to immediate decertification. The company will be notified in writing and shall have recourse to all of the available remedies contained in Chapter 119 of the Revised Code.

Any program applicant or participant who intentionally misrepresents himself or herself as owning, controlling, operating or participating in a historically underutilized business for the purpose of obtaining contracts, subcontracts or any other program benefits shall be decertified.

If decertified, a company has a waiting period of one year before it can re-apply for minority business enterprise status.