

Minority/Women Contracting**MINORITY/WOMEN BUSINESS ENTERPRISE CERTIFICATION
PROCEDURES****PROCEDURES FOR ASSURANCE OF
BONA FIDE MINORITY/WOMEN BUSINESS ENTERPRISE PARTICIPATION
IN THE M/WBE PROGRAM****I. General****A. Purpose**

The purpose of the Minority/Women Business Enterprise (M/WBE) Certification process is to ensure that only bona fide firms, which are at least fifty-one (51) percent owned and controlled, in form and in substance, participate in the Miami-Dade County School Board's M/WBE program. The certification process consists of three (3) sequential steps to certify that the prospective M/WBE is eligible to participate in the program. The three steps are:

1. Collecting and reviewing the specified and necessary information from the M/WBE applicant;
2. Applying the criteria for eligibility, as set forth herein; and
3. Determining whether the M/WBE applicant business is eligible to participate in the Miami-Dade County Public School Board's M/WBE program.

The success of the Miami-Dade County School Board's M/WBE Program will be determined by the Miami-Dade County School Board's ability to limit participation to bona fide M/WBEs. The Miami-Dade County School Board must ensure that its M/WBE Program benefits only those business entities for which the M/WBE Program is intended.

The Miami-Dade County School Board has developed these Certification Procedures to ensure that all M/WBEs, participating in its program, meet the requirements of minority ownership and control. These procedures provide the means to effectively control the status of M/WBE certification, and to establish standardized policies and guidelines in the processing of applications for M/WBE status.

These procedures consolidate, and formalize, instructions and policies regarding this subject, if any, and incorporate the standards as required by the Miami-Dade County School Board.

B. Definitions

1. **Minority/Women Business Enterprise** - Any legal entity, which is organized to engage in commercial transactions, and which is at least fifty-one (51) percent owned and controlled by minority persons. Minority person, as defined in Section III.A.1 6Gx13- 3G-1.01 School Board Rule, means a person who is a citizen or lawful permanent resident of the United States and who is:
 - a. An African American, a person having origins in any of the Black racial groups of Africa;
 - b. An Hispanic, a person of Spanish or Portuguese culture, including, but not limited to, persons with origins in Mexico, South America, Central America, or the Caribbean Islands, regardless of race; or
 - c. A Woman.
2. **M/WBE Applicant** - A business entity which requests the Miami-Dade County Public School Board to recognize it as a Minority/Woman Business Enterprise.
3. **School Board** - The School Board of Miami-Dade County, Florida.
4. **Joint Venture** - An association of two (2) or more business entities to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

C. Applicability

This certification procedure is applicable to all requests from business entities requesting M/WBE status, regardless of whether the business entity is under consideration for, or has received, a School Board contract or subcontract, at any tier. The scope of the certification procedure shall include all contracts for which there is required minority/women utilization, including the purchasing of goods and services, construction, selection of architects and engineers, and the commissioning of other professional services.

D. Responsibilities and Duties

1. **Superintendent** - is authorized and directed, to implement a Business Development and Assistance Program, and to establish such administrative procedures as necessary to carry out this policy.

2. **School Board Administrators** - shall be responsible and accountable, to the extent of their involvement, in the School Board's contracting and procurement activities, to execute the School Board's Business Development and Assistance policies.
3. **Business Development and Assistance Director** - is ultimately responsible for overall implementation, reporting and monitoring of the Business Development and Assistance Program, including, but not limited to, making determinations on behalf of the School Board, as to the eligibility of M/WBE applicants. The Director shall also be responsible for the day-to-day management of the School Board's M/WBE Program, including receiving and reviewing M/WBE certification applications, formulating initial findings, rendering determinations of M/WBE status, and forwarding, to the Superintendent and School Board, actions impacting certification status or related information.
4. **Business Development and Assistance Administrators** - are responsible for obtaining complete Minority/Women Business Enterprise Certification Applications, and all other information deemed necessary, from each M/WBE applicant; conducting onsite audits and investigations pertaining to each M/WBE applicant's status; and forwarding recommendations, as to whether M/WBE applicants are eligible to participate in the School Board's Business Development and Assistance Program, to the Director, Division of Business Development and Assistance.
5. **Certification Appeals Committee (CAC)** - is responsible for hearing all appeal requests from firms denied M/WBE Certification. The committee is authorized to uphold, or overturn, the decision of denial based on the hearing and the M/WBE applicant's original certification application and supporting documents. The Certification Appeals Committee will consist of the following:
 - a. Deputy Superintendent, School Operations;
 - b. Deputy Superintendent, Facilities Planning and Construction;
 - c. Associate Superintendent, Bureau of Procurement and Materials Management;
 - d. Chief Auditor, Internal Audits; and
 - e. Treasurer, Office of Treasury Management.

The members of the committee, or their respective designees, shall sit as voting members of the Certification Appeals Committee.

II. Elements of the M/WBE Definition

A. Ownership

It is regarded as customary that individuals possessing at least fifty-one (51) percent ownership of the business entity enjoy the unrestricted freedom to control and manage the firm on a daily basis. It is considered a fundamental consequence of ownership that such holder(s) of at least fifty-one (51) percent interest of a business entity could act unilaterally without the mutual assistance of the non-minority owner's interest.

The following standards shall apply in the determination of ownership expected for specific business entities seeking Minority/Women Business Enterprise status:

1. **Sole Proprietorship** - to be deemed an M/WBE, the sole proprietor must be a minority person or woman, as defined herein;
2. **Partnership** - to be deemed an M/WBE, the minority/ woman individual's interest must include at least fifty-one (51) percent of the ownership, profit/loss, voting control, and capital of the partnership; and
3. **Corporation** - to be deemed an M/WBE, it is necessary that legal and equitable ownership of at least fifty-one (51) percent of all voting stock, issued by the corporation, be owned by minority/woman individual(s). No stock held in trust, or by any guardian for a minor, shall be considered held by the minority/woman individual, in determining ownership and control.

A minority owner, holding nominal title to corporate stock would not provide the minority owner with the fundamental rights of ownership, where the minority individual's right to vote such stock, or elect the board of directors, is determined by a non-minority person. For the School Board Division of Business Development and Assistance program purposes, the above business would not be granted M/WBE status.

The School Board will look beyond the pro forma ownership, as reflected in the ownership documents. The ownership of the minority/women individuals shall be real, substantial and continuing. Factors which will be considered in determining ownership shall include, but not be limited to, the following factors:

1. Applicants shall establish that minority/women owners are entitled to share in the profits of the business, through salaries, bonuses, profit sharing, dividends, and all other benefits, commensurate with their

ownership percentages.

2. Applicants shall establish that minority/women owners share in all the risks of business, including, but not limited to, third party agreements, bonding and financial arrangements.

B. Control

1. Managerial Control

Managerial control means that the minority/woman owner has the demonstrable ability to make independent and unilateral business decisions needed to guide the future and destiny of the business.

Minority/women owners shall have the authority to control, and demonstrate control over the affairs, management, and operations, of the applicant business, on a regular basis. The discretion of the minority/women owners shall not be subject to any formal or informal restrictions (including, but not limited to, bylaw provisions, partnership agreements, trust agreements, or requirements for cumulative voting) which would impact or usurp the minority/women owners' managerial and operational discretion.

If the applicant is a corporation, and the business and affairs of the corporation are managed under the direction of a board of directors, or shareholders, as provided by the corporate bylaws, or Section 607.11, Florida Statutes, the minority/ women directors, and or shareholders, must be able to effectuate a quorum for the transaction of business, and make independent decisions effecting the day-to-day operations of the business.

Managerial control may be established in many ways. The following factors are not intended to be all inclusive.

- a. Corporate bylaws, and partnership agreements, or other agreements, should be free of restrictive language which dilutes the minority/woman owner(s)' control and prohibits him/her from making decisions which impact the destiny of the business;
- b. The minority/woman owner(s) should be able to show, unequivocally, through documentation, the areas of control such as:
 - i. authority and responsibility to sign checks, for all bank accounts, and letters of credit;
 - ii. authority to negotiate on behalf of the business;

- iii. signature responsibility for insurance, bid bonds, and performance and payment bonds;
 - iv. authority and responsibility to negotiate bank transactions;
 - v. authority to enter into contractual agreements on behalf of the company; and
 - vi. authority to guarantee all instruments which indebt the business.
- c. Agreements for contractual support services that do not usurp the minority/woman owner's authority to control the company are allowed provided the minority/woman owner's power to manage the company is not restricted;
 - d. Minority/women owners shall control or oversee the hiring, firing and supervision of employees, and the setting of employment policies, wages, benefits and other employment conditions; and
 - e. Minority/women owners shall have knowledge and control of all financial matters of the business. The ability of any non-minority owner, employee or agent to sign checks, and/or enter into financial transactions on behalf of the business, will be carefully considered in determining the degree to which the minority/woman owner(s) control the business' finances.

2. Operational Control

Operational control means the degree to which minority/women owners actually manage the business, contingent on the nature of the industry of which the business is a part. In the construction industry, especially among smaller contractors, it is reasonable to expect the owner to be knowledgeable of all aspects of the business. This may not be applicable to large construction contractors who have the assets and personnel to specialize.

In determining the level of operational involvement of the minority/woman owner(s), the following illustrations are delineated and are not intended to be all inclusive.

- a. The minority/woman owner should have some capability, knowledge, training, education, and experience in the industry represented by the M/WBE applicant's type of business;
- b. The minority/woman owner(s) should show that basic management and contractual decisions, relating to the day-to-

day operation of the business, can be independently made. This does not necessarily rule out the minority/woman owner(s) seeking paid or unpaid advice and assistance. The minority/woman owner(s) must presently have the knowledge to consider all advice provided, and make an independent decision; and

- c. The minority/woman owner(s) should have some technical knowledge in the industry to which certification is sought. Technical knowledge, as used herein, denotes a working knowledge of the technical requirements of the business needed to operate in the industry. Employment, education, and training will be considered in determining whether the minority/woman is technically capable of independently making decisions regarding the management and operations of the business.

III. Application Processing

A. Application Format

1. All M/WBE applicants wishing to be considered as M/WBE firms for contracts are expected to apply for M/WBE status by completing a School Board M/WBE Certification Application.

The School Board's M/WBE Certification Applications are to be made available:

- a. in all School Board bids, and contract documents designated as set asides or projects for which M/WBE goals have been established; and
 - b. to individuals, as a result of a request to the Division of Business Development and Assistance, desiring to do business with the School Board under its Business Development and Assistance Program.
2. All M/WBE applicants must complete the M/WBE Certification Application, and submit the following documentation, as appropriate:
 - a. Articles of Incorporation, including amendments;
 - b. Stock Certificates, issued and canceled, not including specimens. If any authorized corporate stock, of any class, has not been issued, a notarized statement to that effect must be provided;
 - c. Corporate Bylaws;

- d. All professional/business licenses including, but not limited to, County and City as required, Miami-Dade County Certificate of Competency, and/or any license issued by the State of Florida. The applicant should also provide the name, address, and ethnicity/gender of the qualifying agent;
- e. Resumes of principals and key personnel;
- f. Voting rights agreements;
- g. All third party agreements, such as lease, loan, and management agreements;
- h. Profit sharing agreements;
- i. Current financial statement, audited if available, including an income statement, balance sheet and the accompanying notes;
- j. Most current federal tax return, with schedules, as required by the business' structure;
- k. Buy-out agreements;
- l. Stock option agreements;
- m. Copy of stock transfer ledger, if available;
- n. Florida Employer's Quarterly Tax Reports and Employee Wage Listing Reports;
- o. Partnership agreement;
- p. Corporate bank resolution(s), and/or bank signature cards, for all bank accounts;
- q. Fictitious name affidavit;
- r. Joint venture agreement;
- s. Most current bond application, if applicable;
- t. Birth certificates and proof of citizenship or permanent residency;
- u. Department of State Corporation Annual Report;
- v. Minutes of the first, and current meetings of the shareholders and directors, and

- w. Such other information and documentation as deemed appropriate by the Division of Business Development and Assistance.
3. Processing is not to be finalized until all applicable and requested documentation is received. Failure to submit required or requested documentation will result in termination of the certification/recertification process.

IV. Review and Analysis Procedures

- A. Once an M/WBE applicant has submitted the documentation, as specified in Section III., the following procedures will apply:
 1. The School Board's M/WBE Certification Application, and/or supporting documentation, will be received by the Division of Business Development and Assistance;
 2. The Division of Business Development and Assistance's Director, or designee, will assign the application to an Administrator, who will evaluate the application and documentation, to determine whether the applicant is a bona fide M/WBE;
 3. An onsite audit may be scheduled with any applicant, for certification, or for any current or previously certified firm. The Administrator may, with the approval of the Director, schedule an onsite audit with the M/WBE principal(s) and employees, to verify the documentation, and to determine the extent of the M/WBE's involvement in the ownership, management, and control of the business;
 4. The Administrator will prepare a summary of the findings and make a recommendation as to whether the applicant is eligible to participate in the School Board's Business Development and Assistance Program. The Administrator may submit an abbreviated summary on the applicant, when it is determined to be appropriate; and
 5. The Director will consider the findings and recommendation of the Administrator, in making a determination as to an applicant's eligibility. Granting or denying of M/WBE status will be performed in accordance with the School Board's Business Development and Assistance Program rules, applicable State Statutes and procedures.
- B. An audit of an M/WBE's accounting records and books may be performed by the School Board, as deemed necessary. The Director, Division of Business Development and Assistance, will issue a request, to the Superintendent, and Chief Auditor, Internal Audits, for an audit to be performed. All relevant background information will be forwarded, to Internal Audits, in connection

with any audit requested.

- C. To assure the truthfulness of any statements made to the staff of the Division of Business Development and Assistance, as required by these regulations, the Division's Director, may, at any time, and, as a matter of discretion, require that these statements be electronically recorded and reduced to writing. Such written statements requested of the applicant will be in the form of a sworn statement. Submission of such a statement will be a requirement for certification as an M/WBE. Failure to submit such a statement upon request will be grounds for termination/denial of the M/WBE application.

V. Issuance of Determination

- A. Once a determination, as to the status of the M/WBE applicant is formulated, such determination shall be transmitted as follows:
 - 1. If the M/WBE applicant is a proposed or actual subcontractor to a School Board prime contractor, the M/WBE eligibility determination shall be transmitted to the prime contractor, as well as, to the subcontractor; or
 - 2. If the M/WBE applicant is seeking certification to be placed on the list of eligible M/WBEs for future contracts, the M/WBE eligibility determination shall be transmitted directly to the applicant.
- B. M/WBE applicants are expected to notify the Division of Business Development and Assistance within fifteen (15) days, and provide a notarized statement, whenever a change occurs in ownership and/or control of the firm. Any misrepresentation shall be grounds for termination of any contract which was awarded in reliance thereon, and may subject the signatories to any other penalties, pursuant to Florida Statutes and School Board rules.
- C. M/WBE certification shall be valid for a two (2) year period, from the date of issue. Certified M/WBEs shall not request a change in their minority/woman designation, to another minority designation during the twenty-four (24) month certification period.

VI. Recertification

- A. M/WBEs must apply for recertification at least thirty (30) days prior to the certification expiration period, to remain on the School Board's list of certified M/WBEs. A School Board M/WBE Recertification Form must be submitted only if;
 - 1. the applicant has been approved by the School Board, as an M/WBE, within the past twenty-four (24) months, and

2. no major changes, or alterations, in the ownership and control of the M/WBE have occurred since previous approval as an M/WBE.

B. Recertification Form and Documentation.

The purpose of the M/WBE Recertification Form is to substantiate whether changes have occurred in the control, management, and ownership of M/WBEs. In order to apply for recertification, the following must be submitted to the Division of Business Development and Assistance:

1. A completed School Board M/WBE Recertification Form; and
2. Most current federal tax return, with schedules, as required by the business' structure.

VII. Decertification

Decertification will occur as a result of the following:

- A. Failure to comply with the School Board's M/WBE policies and procedures regarding requests for information or documents pertaining to ownership, control, or operation of the business; or
- B. Failure to submit a complete M/WBE Recertification Form, as provided for herein; or
- C. Voluntary removal from all School Board M/WBE listings, as requested in writing by the firm's minority/woman owner(s).

VIII. Appeal Process

- A. Applicants which do not meet the M/WBE requirements, as stated herein, will be denied certification by the Division of Business Development and Assistance. Any firm, which believes that it has been wrongly denied certification as an M/WBE, may file an appeal, within five (5) days, following receipt of the Notice of Denial, with the Certification Appeals Committee.
- B. Determination letters will include a summary of facts upon which the denial is based, and a statement of appeal rights.
- C. The School Board Attorney's Office shall be notified, upon receipt of a notice of appeal.
- D. The decision of the Certification Appeals Committee shall be final. If the applicant fails to submit a written request for appeal, to the Certification Appeals Committee, within five (5) days, following the receipt of the notice of denial, the denial shall be conclusive, and the applicant foreclosed from any

further appeal. Applicants which are denied certification shall not reapply for M/WBE Certification for a period of fourteen (14) months from the date of final determination.

IX. Suspension

- A. Any M/WBE applicant, certified M/WBE, principal(s) and all related parties, who misrepresents the status of any concern as an M/WBE, or is a party to such misrepresentation to obtain business or contracts with the School Board under the Business Development and Assistance program, will be suspended from doing business with the School Board for fourteen (14) months. Prior to suspension, the School Board shall inform the M/WBE applicant, certified M/WBE principal(s), and all related parties in writing of the facts and/or conduct which warranted such action. The written notice from the School Board shall include the grounds for, and period of, suspension.
- B. Notices of Suspension will include a summary of facts upon which the suspension is based, and a statement of appeal rights.
- C. Any firm or related party which feels that it has been wrongly suspended from doing business with the School Board, as provided for herein, may file an appeal within five (5) days following receipt of the Notice of Suspension, with the Certification Appeals Committee.
- D. The School Board Attorney's office shall be notified, upon receipt of a notice of appeal.
- E. The decision of the Certification Appeals Committee shall be final. The firm or related parties, which has been suspended from doing business with the School Board, shall be foreclosed from any further appeal rights if it fails to submit a written request for appeal to the Certification Appeals Committee within five (5) days.
- F. The Division of Business Development and Assistance will notify the School Board of all M/WBE Applicants, M/WBEs, and related parties who have been suspended from doing business with the School Board.

X. References

- A. School Board Resolution 85-3 Minority Business Enterprise Statement, February 6, 1985.
- B. School Board Rule 6Gx13- 3G-1.01, Business Development and Assistance Program.
- C. School Board Rule 6Gx13- 3G-1.02, Establishment of Business Development and Assistance Objectives.

- D. School Board Rule 6Gx13- 3G-1.03, Administrative Procedures for M/WBE Participation in Construction Contracting.
- E. School Board Rule 6Gx13- 3G-1.04, Administrative Procedures for M/WBE Participation in Procurement Contracting.
- F. Specific Authority 230.22(2); 235.31(1)(b); 287.093, Florida Statutes.
- G. Section 607.11, Florida Statutes.
- H. Transcript - Public Hearing, Special Panel, Vol. I & II, August 28-29, 1990.

Specific Authority: 230.22(2) F.S.

Law Implemented, Interpreted, or Made Specific: 235.31(1)(b); 287.093 F.S.

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