



DU PAGE COUNTY'S COMMUNITY DEVELOPMENT COMMISSION WBE/MBE RECOGNITION POLICY AND PROCEDURE

PURPOSE

This document has been designed to establish policy and provide guidance for DuPage County's Community Development Commission in recognizing WBE/MBE businesses as required by HUD under 24 CFR, Part 84.

I. DETERMINING STATUS

A. Qualified through other Sources

If a business has been certified as a WBE/MBE by the City of Chicago, the Illinois Department of Central Management or by the Chicago Minority Business Development Council, Inc., the business needs only to fill out page two of the application and provide a copy of the certification letter from any of the above-mentioned agencies.

B. Qualified through DuPage County CDC

Information will be obtained from the applicant's firm to determine if:

- Company ownership is by protected class individuals (minorities and women)
- Investment is by owner
- Firm is free from any conversion rights
- Owner has operational and managerial control of the firm
- Firm is legally owned and licensed

1. Ownership

- a. To be eligible for WBE/MBE, a firm must have at least 51 percent owned by WBE/MBE Individuals.
- b. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate stock outstanding.

- c. In the case of a partnership, 51 percent of each class of partnership interest must be owned by WBE/MBE individuals. Such ownership must be reflected in the firm's partnership agreement.
- d. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by WBE/MBE individuals.

2. Control

- a. Only an independent business may be certified as a WBE/MBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
- b. A WBE/MBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the WBE/MBE owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-WBE/MBE partners, conditions precedent or subsequent, executory agreements, voting trusts, conversion rights, restrictions on or assignments of voting rights) that prevent the WBE/MBE owners, without the cooperation or vote of any non-WBE/MBE individual, from making any business decision of the firm.
- c. The WBE/MBE owners must possess the authority and power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on the matters of management, policy and operations.
- d. The WBE/MBE owner must hold the highest officer position in the company (e.g. chief executive officer or president).
- e. In a corporation, WBE/MBE owners must control the board of directors.
- f. In a partnership, one or more WBE/MBE owners must serve as a general partner, with control over all partnership decisions.
- g. Individuals who are not WBE/MBE may be involved in a WBE/MBE firm as owners, managers, employees, stockholders, officers and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- h. The WBE/MBE owners of the firm may delegate various areas of management, policymaking or daily operations of the firm to other participants in the firm, regardless of whether these participants are WBE/MBE individuals. Such delegation of authority must be revocable, and the WBE/MBE owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the WBE/MBE owners actually exercise control over the firm's operations, management and policy.

- i. The WBE/MBE owners must have an overall understanding of; the firm's operations and clearly possess managerial and technical competence and experience directly related to the type of business in which the firm is engaged. The WBE/MBE owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The WBE/MBE owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- j. If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the WBE/MBE persons who own and control a potential WBE/MBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, recognition should not be denied solely on the ground that the person lacks the license or credential. However, one may take into account the absence of the license or credential as one factor in determining whether the WBE/MBE owners actually control the firm.
- k. In order to be viewed as controlling a firm, a WBE/MBE owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time that it is operating.
- l. A WBE/MBE individual may control a WBE/MBE firm even though one or more of the individual's immediate family members (who themselves are not WBE/MBE individuals) participate in the firm as a manager, employee, owner or in another capacity. However, the WBE/MBE individual must overwhelmingly be the historical and current dominant or controlling managerial and technical employee.
- m. Where a firm was formerly owned and/or controlled by a non-WBE/MBE individual (whether or not an immediate family member) ownership and/or control were transferred to a WBE/MBE individual, and the non-WBE/MBE individual remains now owning the firm must demonstrate, by clear and convincing evidence, that

1. The transfer of ownership and/or control to the WBE/MBE individual was made for reasons other than obtaining certification as a WBE/MBE; and
 2. The WBE/MBE individual actually controls the management policy and operations of the firm, notwithstanding the continuing participation of a non-WBE/MBE individual who formerly owned and/or controlled the firm.
- n. In determining whether a firm is controlled by WBE/MBE owners, you may consider whether the firm owns equipment necessary to perform its work.
 - o. The CDC will grant recognition to a firm only for specific types of work in which the WBE/MBE owners have the ability to control the firm.
 - p. A business operating under a franchise or license agreement may be certified if it meets the requirement standards and the franchiser or licensor is not affiliated with the franchisee or licensee.
 - q. In order for a partnership to be controlled by WBE/MBE individuals, any non-WBE/MBE partners must not have the power, without the specific written concurrence of the WBE/MBE partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
 - r. The WBE/MBE individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the WBE/MBE individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

c. Other Rules Affecting Recognition

1. CDC will give consideration to whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the WBE/MBE program.
2. A firm's evaluation must be based on present and historical circumstances. A firm should not be refused recognition based solely on historical information indicating a lack of ownership or control of the firm by WBE/MBE individuals at some time in the distant past, if the firm currently meets the ownership and control standards. Nor must a firm be refused recognition.
3. WBE/MBE firms and firms seeking WBE/MBE recognition shall cooperate fully with CDC's request for information relevant to the recognition process. Failure or refusal to provide such information is a ground for administratively closing, denial or removal of recognition.

4. Only firms organized for profit may be eligible WBE/MBEs. Not-for-profit organizations, even though controlled by WBE/MBE individuals, are not eligible to be recognized as WBE/MBEs.
5. An eligible WBE/MBE firm must be owned by individuals who are WBE/MBE. Except as stated here, a firm that is not owned by such individuals, but instead is owned by another firm – even by a WBE/MBE firm – cannot be an eligible WBE/MBE except as defined in 6 and 7 below.
6. If WBE/MBE individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the subsidiary may be certified if it meets all the requirements.
7. A subsidiary may be recognized only if there is cumulatively 51percent ownership of the subsidiary by WBE/MBE individuals.
8. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by WBE/MBE individuals.
9. A firm that is owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for recognition.

II ELIGIBILITY CRITERIA PROCEDURES

A. Application

The firm seeking certification must be complete and have notarized the recognition application.

B. File Preparation

1. A file will be established for each application received and the information contained on the application will be logged into the database. A number will be assigned after checking for duplication.
2. Acknowledgement (letter, fax, email, etc.) should be sent within seven (7) days of receipt of the application package, and if additional information is needed, it should be requested at that time. An approximate processing time (approximately 30 days) will be mentioned in the correspondence.

C. Review of WBE/MBE Status

1. The applicant must certify that he/she is (WBE/MBE) a qualified person on the WBE/MBE Recognition Application form. Qualified persons are
 - a. Black Americans
 - b. Hispanic Americans

- c. Asian/Pacific Americans
 - d. Hasidic Jews
 - e. Women
2. Applicants must be U.S. Citizens or permanent residents.
 3. The names, race and sex that appear in/on various documents will be checked for conflicting information and determine the protected class owner's control.

D. Determination of Ownership

1. The application will be reviewed to determine if:
 - a. 51 percent protected class ownership
 - b. Protected class owners make a substantial contribution in time, expertise money, etc
2. Each owner must provide some evidence of payment, monetary or in kind, for his/her share of ownership. Examples of evidence include:
 - a. Canceled checks
 - b. Bookkeeping entries and/or
 - c. Signed agreements
 - d. Stock certificates (both sides)
 - e. Shareholder agreements (if any)
 - f. Partnership agreements (if any)
 - g. Joint venture agreements (if any)

E. Determination of WBE/MBE Control

1. The reviewer will examine with particular attention to but not limited to:
 - a. Names, race and sex, which appear in/on various documents
 - b. Conflicting information
 - c. Determine protected class owner's control
2. Arrangements with non-protected class firms:
 - a. Date interlocking directors and/or officers became involved
 - b. Shared offices/common telephone numbers – date the arrangement became effective and terms of the arrangement
 - c. Common telephone numbers – length of time been in existence
3. Articles of Incorporation
4. Date of Incorporation
5. Original officers and Directors
6. Description of Articles
7. Corporate By-Laws
 - a. Duties of the directors and Officers
 - b. Voting rights of the stockholders
 - c. Restrictive language which may affect the minority or woman's control

8. Shareholder agreements – The effected on the protected class owners' control if exercised
9. Decision making – Individuals responsible for the decision making
10. Resumes – Education and work history of protected class member
11. Individuals who have the authority to sign checks, invoices, lease or purchase agreements
 - a. Number of signatures required on checks
 - b. Signature authority and/or dollar limitation on check signing
12. Does the protected class owner continue to work for a non-protected class firm – Describe relationship of the firm to the applying WBE/MBE firm
13. Who in the firm does the following
 - a. Negotiates contracts
 - b. Negotiates loans
 - c. Prepares estimates
 - d. Makes financial decisions
 - e. Hire and fire management personnel
 - f. Responsible for field supervision and/or authorizes purchase of major equipment

F. Recognition

1. A letter will be prepared and signed by the CDC manager stating that this organization has been recognized, for the purposes of CDC's use, as a WBE/MBE company. The business's name will be added to the CDC WBE/MBE list, which is given out at CDC setup meetings. A copy of the list will be sent to the recognized organization.
2. Organizations denied recognition would be sent a notarized letter stating the reason for the denial. If the organization would like to be reconsidered for recognition, the business will need to contact CDC within 15 days of receipt of letter. Otherwise, a final denial letter will be sent after the 15-day period.

G. Continued Recognition

1. Annually, a form letter will be sent requesting if WBE/MBE status has stayed the same, changed, or if the organization is no longer interested in being on the CDC list. (Letter is to correspond with CDC project year.) If there has been a change, a new recognition application will be to be completed along with supporting documentation reflecting the change. This letter will be generated in January with a return date of February 26. If no response is heard by February 26, the firm's name will be removed from the CDC WBE/MBE list.
2. Following the review for continued participation, the firm will receive notification of continued participation.