

**NORTH CENTRAL TEXAS  
REGIONAL CERTIFICATION AGENCY**

**MINORITY/WOMEN BUSINESS  
ENTERPRISES CERTIFICATION**

**POLICY  
AND  
PROCEDURES  
MANUAL**

**ADOPTED  
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# MINORITY/WOMEN BUSINESS ENTERPRISES CERTIFICATION STANDARDS AND PROCEDURES MANUAL

## I. MISSION STATEMENT

It is the mission of the NCTRCA to provide assistance through education and counseling throughout the certification process in order to build a certified vendor pool for our member entities.

## II. POLICY STATEMENT

It is the policy of the public entities that are members of the North Central Texas Regional Certification Agency (Agency) that Minority Business Enterprises (MBEs) and Women-Owned Business Enterprises (WBEs) have the maximum possible opportunity to participate in their procurement activities. With this policy in mind, the public entities established the Agency to assist MBEs and WBEs with certification. The procedures outlined in this document describe the Agency's certification process.

It should be noted that failure to be certified as a MBE or WBE by the Agency DOES NOT PRECLUDE a firm from participating directly in any of the governmental member entities' purchasing and contracting opportunities.

## III. RESPONSIBILITIES

The Agency's Board of Directors is ultimately responsible for ensuring that the Agency's policies and applicable federal, state and local regulations are implemented and enforced. The Agency's Director is the operational manager responsible for the overall implementation, monitoring and reporting of the Agency's certification process and shall execute all Agency correspondence. The Agency's staff is assigned the responsibilities for the day-to-day implementation of the Agency's certification process.

## IV. PROPRIETARY DISCLOSURE

The Agency will safeguard from disclosure, information that is covered by federal, state and local laws and regulations, and that reasonably may be regarded as confidential personal and business information. Disclosure of information applicable to and provided as results of the certification process will only be with the owner advice and consent.

## V. DEFINITIONS

**"Affidavit"** - A notarized document that swears/affirms that the foregoing information and statements are true and correct that have been provided in the application for certification.

**"Affidavit Number"** - A unique number assigned to an applicant that has submitted a complete application for the purpose of rendering a decision regarding certification.

**"Affiliate"** - To associate oneself as a subordinate, subsidiary or member with another.

**“Affiliation”** - As defined in part by the U. S. Small Business Administration (SBA) in 13CFR121.103 “ (1) Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. (2) SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.

**“Agency”** - North Central Texas Regional Certification Agency.

**“Alaska Native”** - A citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen who a Native village or Native group regards as an Alaska Native, if their father or mother is/was regarded as an Alaska Native.

**“Alaska Native Corporation (ANC)”** - Any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended in 43 U.S.C. 1601, et seq.

**“Appeals Advisory Committee (AAC)”** - An ad-hoc committee composed of governmental member entities created when a firm has been denied certification and wishes to appeal the Agency’s decision.

**“Applicant”** - A business entity that requests the Agency to certify it as an MBE or WBE by submission of an application for certification.

**“Board”** - The Agency’s Board of Directors composed of governmental entities and associate member entities.

**“Certification”** - The process by which a business enterprise is initially determined by the Agency to be a bona-fide minority or woman owned business.

**“Certification Term”** - The MBE or WBE certification of a business issued for a one-year term with updates required on an annual basis.

**“Challenge”** - A formal filing, that must be submitted in writing, by a third party to rebut the presumption that a particular firm does not meet the standards for being certified as an MBE or WBE business and shall be addressed by the Agency Director within 60 calendar days from the formal filing date.

**“Control”** - The applicant(s) must have 51% ownership and primary power to direct the management of a business enterprise on a day-to-day basis.

**“Corporation”** - A business concern in which minorities or women own at least 51% of an existing legal entity created for liability purposes.

**“Denial”** - The Agency’s action of denying certification to a firm that does not meet the certification eligibility criteria as outlined in this manual and other regulations promulgated by Board of Directors.

**“Immediate Family Member”** - Any relative that can be considered a father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law of the applicant(s).

**“Indian Tribe”** - Any tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided to Indians because of their status by the United States Government. Or, when such programs and services are recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern”.

**“Minority Business Enterprise (MBE)”** - Is a business concern which

- a. is at least 51 percent owned and controlled by one or more minority persons, or in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more minority persons and
- b. whose management and daily business operations are controlled by one or more minority persons who own it.

**“Minority Individual”** – A person who is a citizen or lawfully admitted permanent resident of the United States and who is:

**“Asian-Pacific Americans”** - Includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong.

**“Black Americans”** - Includes persons having origins in any of the Black racial groups of Africa.

**“Hispanic Americans”** - Includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.

**“Native Americans”** - Includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

**“Subcontinent Asian Americans”** – Includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; or any individual who, on a case-by-case basis, is found to be a minority individual.

**“Native Hawaiian”** - Any individual whose ancestors were natives, prior to 1778, of the area, which now comprises the State of Hawaii.

**“Native Hawaiian Organization”** - Any community service organization serving Native Hawaiians in the State of Hawaii, which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

**“Ownership”** – The business structure of the firm under the definitions for “sole proprietorship, partnership and corporation”.

**“Partnership”** - A business concern in which minorities or women own at least 51 percent of the partnership assets or interests.

**“Primary Industry Classification”** - The six-digit number assigned by the North American Industrial Classification System (NAICS) or a comparable classification system identified by the Board of Directors.

**“Principal Place of Business”** – The business location where the individuals who manage the firm’s day-to-day operations spend most working hours and where top management’s business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the Agency will determine the principal place of business for MBE/WBE program purposes.

**“Separate Martial Agreement”** - A legal binding agreement between a husband and wife, of which the husband relinquishes his ownership interest in the wife's sole and separate property in the applicant firm. This must take the form of an affidavit sworn to by the owner (s) of the applicant firm before a person who is authorized by state law to administer oaths and filed in the county in which the couple resides.

**“Small Business Administration (SBA)”** – United States Small Business Administration.

**“Sole Proprietorship”** - A business concern that is owned by a minority and/or woman.

**“Tribally Owned Concern”** - Any concern at least 51 percent owned by a recognized Indian tribe.

**“Viable Business Concern”** - A firm that has been in business for at least 90 calendar days.

**“Women Business Enterprise (WBE)”** - A business concern which

- a. is at least 51 percent owned and controlled by one or more women, or in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more women; and,
- b. whose management and daily business operations are controlled by one or more women who own it.

## **VI. MBE/WBE ELIGIBILITY STANDARDS**

At a minimum, the following standards will be used by the Agency as part of the certification process. The process will be used in determining whether a firm is a business concern, owned and controlled by one or more minorities, and/or women. If eligible the firm will be certified as a MBE or WBE. A MBE or WBE can be either a minority owned business enterprise or a woman owned business enterprise that meets all certification eligibility standards.

## **VII. CERTIFICATION STANDARDS**

### **A. Allocation of burdens of proof**

(1) In determining whether to certify a firm as eligible to participate as a MBE or WBE, the firm seeking certification has the burden of demonstrating to the Agency, by a preponderance of the evidence, that it meets the requirements of the standards concerning group membership or individual status, ownership, and control.

(2) The Agency must refutably presume that members of the designated groups are minorities and women. However, applicants have the obligation to provide the Agency information concerning their minority status.

(3) The Agency must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, and control.

### **B. Rules that governs group membership determinations**

(1) If the Agency has a reason to question whether an individual is a member of the presumptive group, it must require the individual to demonstrate, by a preponderance of the evidence, that he or she is a member of the group.

(2) In making such a determination, the Agency must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the relevant community regards the person as a member of the group. The Agency may require the applicant to produce documentation of group membership.

(3) The decisions concerning membership in a designated group is subject to the certification appeals procedures.

### **C. Rules that governs determinations of ownership**

(1) The Agency must consider all the facts in the record, viewed as a whole, in determining whether the minorities and/or women in a firm own the firm.

(2) To be an eligible MBE or WBE, a firm must be at least 51 percent owned, controlled and managed by individual(s) who are minorities and/or women. In the case of a corporation, such individual (s) must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. In the case of a partnership, the minorities and/or women must own 51 percent of each class of partnership interest. Such ownership must be reflected in the firm's partnership agreement. In the case of a LLC the minorities and/or women must own at least 51 percent of each class of member interest.

(3) The firm's ownership by minorities and/or women must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The minorities and/or women owner (s) must enjoy the customary incidents of ownership, and share

in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(4) All securities that constitute ownership of a firm shall be held directly by minorities and/or women. Except as provided below, no securities or assets held in trust, or by any guardian for a minor, are considered as held by a minority or woman in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by minorities and/or women for purposes of determining ownership of the firm, if:

(a) The beneficial owner of securities or assets held in trust are minorities or women, and the trustee is the same or another such individual; or

(b) The beneficial owners of a trust are minorities and/or women who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same minorities or women are the sole grantor, beneficiary, and trustee.

(5) The contributions of capital or expertise by the minorities and/or women owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include:

- A promise to contribute capital;
- An unsecured note payable to the firm or an owner who is not a disadvantaged individual;
- A mere participation in a firm's activities as an employee.

Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(6) The following requirements apply to situations in which expertise is relied upon as part of the minorities and/or women owner's contribution to acquire ownership.

(a) The owner's expertise must be documented in the record and be:

- (i) In a specialized field;
- (ii) Of outstanding quality;
- (iii) In areas critical to the firm's operations;
- (iv) Indispensable to the firm's potential success;
- (v) Specific to the type of work the firm performs;

These records must clearly show the contribution of expertise and its value to the firm.

(b) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(7) The Agency must always deem as held by a minority or woman, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result:

- (a) Of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
- (b) Through inheritance, or otherwise because of the death of the former owner.

- (8) (a) The Agency must presume for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-minority or non-MBE/WBE firm who is:
- (i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
  - (ii) Involved in the same or a similar line of business; or
  - (iii) Engaged in an ongoing business relationship with the firm; or
  - (iv) An affiliate of the firm, for which the individual is seeking certification.

(b) To overcome this presumption and permit the interests or assets to be counted, the minorities or women must demonstrate to you, by clear and convincing evidence, that:

- (i) The gift or transfer to the individual(s) was made for reasons other than obtaining certification as a MBE or WBE; and
- (ii) The minorities or women actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-minority who provided the gift or transfer.

(9) The Agency must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(a) Marital assets that are held jointly or as community property by both spouses and are used to acquire the ownership interest asserted by one spouse, the Agency must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The Agency will not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the minority or woman owner of the firm.

(b) A copy of the Separate Marital Agreement document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for MBE or WBE certification.

(10) The Agency may consider the following factors in determining the ownership of a firm. However, the Agency shall not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

- (a) A minority or woman acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (5) above;
- (b) There is a provision for the co-signature of a spouse who is not a minority on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents;
- (c) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a minority to a spouse who is such an individual. In this case, the Agency must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by minorities and/or women.



D. Rules that govern determinations concerning control

(1) In determining whether minorities and/or women owners control a firm, you must consider all the facts in the record, viewed as a whole.

(2) Only an independent business may be certified as a MBE or WBE. An independent business is one the viability in which does not depend on its relationship with another firm or firms.

In determining whether a potential MBE or WBE is an independent business, the Agency must verify the relationships with non-MBE/WBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

- The Agency must consider whether present or recent employer/employee relationships between the minorities and/or women owner(s) of the potential M/WBE and non-M/WBE firms or persons associated with non-MBE/WBE firms' compromise the independence of the potential MBE or WBE firm.
- The Agency must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential MBE or WBE firm.
- In considering factors related to the independence of a potential MBE or WBE firm, the Agency must consider the consistency of relationships between the potential MBE/WBE and non-MBE/WBE firm (s) with normal industry practice.

(3) A MBE or WBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the minorities and/or women owners. There can be no restrictions:

- Through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (i.e., cumulative voting rights, voting powers attached to different classes of stock):
- Employment contracts;
- Requirements for concurrence by non-minority partners;
- Conditions precedent or subsequent;
- Executor agreements, voting trusts, restrictions on or assignments of voting rights that prevent the minorities and/or women owners, without the cooperation or vote of any non-minority, from making any business decision of the firm.

This paragraph does not preclude a spousal co-signature on documents as provided for in paragraph C above.

(4) The minorities and/or women owner (s) must 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 long-term decisions on matters of management, policy and operations.

- The minorities or women owner(s) must hold the highest officer position in the company (i.e., chief executive officer or president).
- In a corporation the minorities and/or women owner(s) must control the board of directors.

- In a partnership, one or more minorities and/or women owner(s) must serve as general partners, with control over all decisions.

(5) Individuals who are not minorities and/or women may be involved in a MBE or WBE 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.

(6) The minorities and/or women owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are minorities and/or women. Such delegations of authority must be revocable, and the minorities and women owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the minorities and/or women owners in the firm's overall affairs must be such that the Agency can reasonably conclude that the minorities and/or women owners actually exercise control over the firm's operations, management, and policy.

(7) The minorities and/or women owner(s) must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The minorities and/or women owner(s) is 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 minorities and/or women owner (s) 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.

(8) If a state or local law requires the person(s) to have a particular license or other credential in order to own and/or control a certain type of firm, then the minorities and/or women who own and control a potential MBE or WBE firm of that type must possess the required license or credential. If a state or local law does not require such a person to have such a license or credential to own and/or control a firm, the Agency must not deny certification solely on the ground that the person lacks the license or credential. However, it may take into account the absence of the license or credential as one factor in determining whether the minorities and/or women owner(s) actually control the firm.

(9) (a) The Agency may consider differences in remuneration between the minorities and/or women owners and other participants in the firm in determining whether to certify a firm as a MBE or WBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. After a careful evaluation, the Agency may determine that the minorities and/or women owner(s) controls a firm although that owner's remuneration is lower than that of other participants.

(b) In a case where a non-minority formerly controlled the firm, and a minority and/or woman is now in control, the Agency must consider the difference in remuneration of the former and

current owner of the firm as a factor in determining who controls the firm, particularly when the non-minority remains involved with the firm and continues to receive greater compensation than the minority and/or woman.

(10) In order to be viewed as controlling a firm, the minorities and/or women owner(s) cannot engage in outside employment or other business interests that conflict with the management of the firm. Nor may management 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 it is operating.

(11) (a) A minority and/or woman may control a firm even though one or more of the individual's immediate family members (who themselves are not minorities or women) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, the Agency must make a judgment about the control, the minorities and/or women owners exercises vis-a-vis other persons involved in the business, without regard to whether or not the other persons are immediate family members.

(b) If the Agency cannot determine that the minorities and/or women owner(s), as distinct from the family as a whole, control the firm, then the minorities and/or women owner(s) have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(12) Where a firm was formerly owned and/or controlled by a non-minority whether or not an immediate family member, ownership and/or control were transferred to a minority and/or woman, and the non-minority remains involved with the firm in any capacity, the minority and/or woman now owning the firm must demonstrate to the Agency, by clear and convincing evidence, that:

- The transfer of ownership and/or control to the minorities and/or women was made for reasons other than obtaining certification as a MBE or WBE; and
- The minorities and/or women actually control the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-minority who formerly owned and/or controlled the firm.

(13) In determining whether the minorities and/or women owner(s) control a firm, the Agency may consider whether the firm owns equipment necessary to perform its work. However, the Agency cannot determine that a firm is not controlled by a minorities and/or women solely because the firm leases, rather than owns, equipment. Especially, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(14) The Agency must grant certification to a firm only for specific types of work in which the minorities and/or women owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate that its minorities and/or women owners are able to control the firm with respect to that type of work. The Agency may not, in this situation, require that the firm be re-certified or submit a new application for certification, however it must verify the minorities and/or women owner's control of the firm in the additional type of work.

(15) A business operating under a franchise or license agreement may be certified if it meets the standards and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the Agency should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license. That is providing the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership.

Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(16) In order for a partnership to be controlled by minorities and/or women, any non-minority partner(s) must not have the power, without the specific written concurrence of the minorities and/or women partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(17) The minorities and/or women controlling a firm may use an employee leasing company. The use of such a company does not preclude the minorities and/or women 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.

#### E. Other rules affecting certification

(1) (a) The Agency must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a MBE or WBE; however, consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward MBE/WBE goals.

(b) The Agency may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the MBE/WBE program.

(2) The Agency must evaluate the eligibility of a firm on the basis of present circumstances. It must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by minorities and/or women at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor must it refuse to certify a firm solely on the basis that it is a newly formed firm.

(3) MBE or WBE firms seeking certification shall cooperate fully with the Agency's requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for withdrawal, denial or removal of certification.

(4) Only firms organized for profit may be eligible MBE or WBEs. Not-for-profit organizations, even though controlled by minorities and/or women are not eligible to be certified as a MBE or WBEs.

(5) An eligible MBE or WBE firm must be owned and controlled by individuals who are minorities and/or women. Except as provided for in this paragraph, a firm which is owned by another firm, even a MBE or WBE firm, cannot be an eligible MBE or WBE.

(a) If minorities and/or women 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 Agency may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(b) The Agency may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by minorities and/or women. The following examples illustrate how this cumulative ownership provision works:

**EXAMPLE 1:**

*Individual (s) who are minorities and/or women owns 100 percent of a holding company, which has a wholly owned subsidiary. The subsidiary may be certified, if it meets all other requirements.*

**EXAMPLE 2:**

*Minorities and/or women that own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.*

**EXAMPLE 3:**

*Minorities and/or women that own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by minorities and/or women is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so the Agency may certify the subsidiary, if all other requirements are met.*

**EXAMPLE 4:**

*Same as Example 2 or 3, but someone other than minorities and/or women own the parent or holding company controls the subsidiary. Even though the subsidiary is owned by minorities and/or women, through the holding or parent company, the Agency cannot certify it because it fails to meet control requirements.*

**EXAMPLE 5:**

*Minorities and/or women own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by minorities and/or women is about 31 percent. This is less than 51 percent, so the Agency cannot certify the subsidiary.*

**EXAMPLE 6:**

*Minority and/or women own 51 percent of a limited partnership of which the general partner owns 1 percent. In this case, the minority and/or women must also own 51 percent of the governing subsidiary.*

(6) 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 minorities and/or women.

(7) The Agency must not require a MBE or WBE firm to be pre-qualified as a condition for certification unless the member entities require firms that participate in its contracts and subcontracts to be pre-qualified.

(8) 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 certification. However, the firm must be controlled by minorities and/or women.

## **VIII. CERTIFICATION PROCEDURES**

### **A. Procedures the Agency must follow in making certification decisions.**

(1) The Agency must ensure that only eligible firms are certified as MBE or WBEs.

(2) The Agency must determine the eligibility of firms as MBE or WBEs consistent with the certification standards adopted by the Board of Directors.

(3) The Agency must take all the following steps in determining whether a MBE or WBE firm meets the standards:

- Review the certification application and all supporting documentation prior to making a decision about the firm's eligibility.
- Determine the work history of the firm, including any contract it has received and works it has completed, if applicable;
- Obtain a description of the firm's scope of work it performs as needed or required to participate in the MBE/WBE programs;
- Obtain or compile a list of the equipment owned by or available to the firm and the licenses of the firm's key personnel to perform the work it seeks to do as part of M/WBE program;
- Ensure the applicant attests to the accuracy and truthfulness of the information included in the certification application. This shall be done in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths.

(4) The Agency must make a decision on an application for certification within 90 calendar days of receiving an application from the applicant firm with all information required for certification. The Agency may extend this time period once, for no more than an additional 60 calendar days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.

(5) Once the Agency has certified a MBE or WBE, the certification will be valid for one (1) year; unless the certification is successfully challenged and invalidated.

(6) All MBEs and WBEs must inform the Agency in writing within thirty (30) calendar days of any change in circumstances such as ownership, control requirements or any material change in the information provided in their application. Changes in management responsibility among members of a limited liability company are covered by this requirement.

The firm must attach supporting documentation describing in detail the nature of any changes. The notice must take the form of an affidavit sworn to by the owner (s) of the firm before a person who is authorized by state law to administer oaths. If the firm fails to make timely

notification of such a change, it will be deemed to have failed to cooperate with the Agency's requirements for certification and shall be removed from the certified vendor list.

(7) Upon the firm's initial certification, the MBE or WBE firm will be required to re-certify each year by submitting an affidavit of no change. This affidavit must be sworn to by the firm's owner (s) before a person who is authorized by state law to administer oaths. The Agency also requires a complete copy of business tax returns and corporate minutes, if applicable.

The firm must identify if there is anything that may affect its ownership and control requirements or any material changes in the information provided in its application form. If the firm fails to provide this affidavit in a timely manner, it will be deemed to have failed to cooperate and shall be lapsed.

(8) Any previously certified MBE or WBE firm that has recently been purchased by another minority and/or woman must complete a new application and submit supporting documentation to validate the firm's eligibility. The Agency must review the data to determine if the firm is at least 51 percent owned, controlled, managed by individual(s) that are a part of the presumptive group. The new owner(s) must also demonstrate the knowledge or expertise to perform the work in which the firm is seeking certification.

(9) The Agency must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable federal, state, and local law.

B. Rules that governs denials of initial requests for certification

(1) When the Agency denies the request of certification by a firm, it shall provide the firm a written explanation of the reasons for the denial; specifically referencing the evidence in the record that supports each reason. All documents and other information on which the denial is based must be made available to the applicant, on request.

(2) When the Agency denies certification of a firm, the firm may appeal to the Agency and request the opportunity to present their case to the Appeals Advisory Committee (AAC). The individuals who serve on an AAC must be knowledgeable about the certification requirements.

(3) The AAC will be composed of three (3) representatives from the governmental member entities. If additional information, documentation or action is requested, the AAC will establish a specified time for the request to be compiled (agreed to by the applicant). The AAC will meet to discuss the additional information or documentation or action and the AAC's decision will be rendered by the Agency Director in writing no later than thirty (30) calendar days from the agreed to date.

If no additional information or documentation or action is needed, the applicant will be advised that the AAC's decision will be rendered by the Agency Director in writing no later than thirty (30) calendar days from appeal date.

(4) Decisions made by the AAC shall be final. If the AAC's decision is to deny the applicant firm, the Agency must establish a time period of no more than twelve months from the date of the denial letter that must elapse before the firm may reapply to the Agency for certification. The time period for reapplication begins on the date of the final denial letter.

### C. Procedures to challenge/remove a MBE or WBEs eligibility

#### (1) Ineligibility complaints

Any person or entity may file a challenge with the Agency by submitting a written complaint alleging that a certified firm is ineligible and specify the alleged reasons for ineligibility. The Agency is not required to accept a general allegation that a firm is ineligible or an anonymous complaint.

The complaint shall include any information or arguments supporting the complainant's assertion that the firm is ineligible and why the firm should not continue to be certified. Confidentiality of complainants' identities will be protected.

The Agency must review its records concerning the firm, any material provided by the firm and the complainant, and other available information. The Agency may request additional information from the firm or conduct any other investigation that it deems necessary and render a decision no later than sixty (60) calendar days from the receipt date of the complaint.

If the Agency determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, it shall. If the Agency determines that reasonable cause does not exist, it shall notify the complainant and the firm in writing of this determination and the cause for it. All statements and findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

#### (2) Agency initiated proceedings

If a firm notifies the Agency of a change in its circumstances or other information and the Agency determines that there is reasonable cause to believe that a currently certified firm is ineligible, it shall provide written notice to the firm. The notification shall state the reasons for the determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

#### (3) Hearing

When the Agency notifies a firm that there is reasonable cause to remove its eligibility as provided in paragraph above, it shall give the firm an opportunity for an informal hearing. The firm may respond to the reasons for the proposed removal of its eligibility in person, providing information and arguments concerning why it should remain certified.

- (a) In such a proceeding, the firm bears the burden of proving, by a preponderance of the evidence that it meets the certification standards.
- (b) The Agency shall maintain a record of the hearing.
- (c) The firm may elect to present information and arguments in writing, without attending a hearing.

#### (4) Separation of functions

The Agency must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility. Such office and personnel can not be subject to direction from the office or personnel who did take part in these actions.

#### (5) Grounds for decision



The Agency must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to it at the time that it certified the firm. It may base such a decision on one or more of the following:

- (a) Changes in the firm's circumstances since the certification of the firm that render the firm unable to meet the eligibility standards;
- (b) Information or evidence not available to it at the time the firm was certified;
- (c) Information that was concealed or misrepresented by the firm in previous certification actions;
- (d) A change in the certification standards or requirements since the firm was certified;
- (e) A documented finding that was initially overlooked by Agency staff or
- (f) A documented finding that the determination to certify the firm was factually erroneous.

(6) Notice of decision

Following the final decision, the Agency shall provide the firm written notice within fifteen (15) calendar days of the decision and the reasons.

(7) The status of firm during proceeding

A firm remains an eligible MBE or WBE in the Agency's database during the pending phase of a proceeding to remove its eligibility. The firm does not become ineligible until the issuance of the final letter of denial.