

123:2-14-02

Certification criteria.

- (A) All applications for certification, expedited certification, or re-certification into the Minority Business Enterprise (MBE); Encouraging Diversity, Growth, and Equity (EDGE); or Women-owned Business Enterprise (WBE) programs are filed with the Ohio Department of Administrative Services, Equal Opportunity Division (DAS/EOD) on forms provided by DAS/EOD and in the manner specified by DAS/EOD.
- (B) DAS/EOD may conduct on-site interviews and on-site inspections at any location(s) of a MBE, EDGE, or WBE-certified or an applicant business requesting certification, expedited certification, or re-certification. The preferred location of interviews is at the location of the business. If the Coordinator determines that the business location is unsuitable for an interview or for any other reason, the interview may be conducted by phone or at an alternative location.
- (C) DAS/EOD reserves the right to request and access any pertinent personal and business records or information that DAS/EOD considers necessary to evaluate an application.
- (D) Failure to produce any information or documents required by law, rule, the application form, or at the request of DAS/EOD may be cause for the administrative closure, denial, or revocation of an application or certification.
- (E) DAS/EOD may request at any time during certification that a certified business submit a new application, all required supporting documentation, and submit to an interview.
- (F) An applicant or MBE, EDGE, or WBE-certified business may withdraw its application or surrender its certification with the approval of the Coordinator.
- (G) Upon completion of the application process for certification, expedited certification, or re-certification of an MBE, EDGE, or WBE-certified business, the Coordinator reviews the application and supporting documents to determine if the business and its at least fifty-one percent eligible owner(s) meet the eligibility requirements for the applicable program.
 - (1) If the Coordinator determines that the business and its at least fifty-one percent eligible owner(s) meet the applicable criteria set forth in this chapter, the Coordinator will certify the business under the applicable program.
 - (2) The Coordinator may determine the length of an MBE, EDGE, or WBE certification, which may be for up to two years from the date of certification. In the case of expedited certifications, the certification period will not exceed the currently issued certification from the equivalent program, plus thirty days.

- (H) If the Coordinator determines that the business or its at least fifty-one percent eligible owner(s) do not meet the criteria set forth in this chapter, the request for certification, expedited certification, or re-certification will be denied.
- (1) When an Adjudication Order is issued denying an applicant business's request for certification, expedited certification, or re-certification, the business and the owner(s) of the business are not eligible for that certification(s) for one year from the date of the Adjudication Order. The Coordinator has the right to adjust the waiting period at any time and for any reason.
- (I) All MBE, EDGE, or WBE-certified businesses shall notify DAS/EOD in writing (letter or email) within thirty days of any change in circumstances affecting the business or the at least fifty-one percent eligible owner(s); including but not limited to current contact information, changes in ownership, business structure, independence, control requirements, or any material change in the information provided in its application, including changes in management responsibility among owner(s) of the certified business. A material change will require the at least fifty-one percent eligible owner(s) to submit a new application, supporting documentation, and may require an interview to determine if the business and at least fifty-one percent eligible owner(s) continue to meet certification criteria. Failure to maintain applicable certification criteria as stated in this chapter is cause for revocation of the certified business's certification(s).
- (J) Business and personal financial information and trade secrets submitted by MBE, EDGE, or WBE-certified businesses or program applicants are not public records for purposes of section 149.43 of the Revised Code, unless the financial information or trade secrets are presented at a public hearing or public proceeding regarding the applicant's eligibility to participate in the program(s).
- (K) If a business or any owner(s) of a business is currently debarred by the federal government, state of Ohio, local government, political subdivision, or any other governmental entity, the applicant business and owner(s) are not eligible for MBE, EDGE, or WBE certification, expedited certification, or re-certification, and the debarment is grounds for revocation.
- (L) To be certified as an MBE, EDGE, or WBE-certified business, a business must be a for-profit business entity that has been "in business" with the same owner(s) and ownership percentages for at least twelve months immediately prior to requesting certification. If a business has been in business for less than one year, but it is the direct successor to a business that has operated for more than one year, the one-year requirement is satisfied if the ownership and control of the business has remained the same. The requirement that the business has been in operation for one year does not apply to joint venture applicants.

- (M) An applicant business is prohibited from conducting “business” with any member of the applicant business or their businesses that holds an equity interest in the business (except for the at least fifty-one percent eligible owner(s) who may conduct business with the business(es) owned by the at least fifty-one percent eligible owner(s)).
- (N) A member or owner of the business holding an equity interest in the business (except for the at least fifty-one percent eligible owner(s)) may not provide a loan (monetary or otherwise) to the business, unless the at least fifty-one percent eligible owner(s) hold assets separate from the ownership in the business that can satisfy the outstanding amount of the loan.
- (O) A business requesting certification into the MBE, EDGE, or WBE program must disclose to DAS/EOD all financial arrangements (public and private) that the at least fifty-one percent eligible owner(s) or business has entered into with any individual(s), business(es), or entity that affects the business or the at least fifty-one percent eligible owner(s).
- (P) The Coordinator may certify a business as an MBE, EDGE, or WBE-certified business, or a joint venture as an MBE, EDGE, or WBE-certified joint venture, provided the at least fifty-one percent eligible owner(s) of the business demonstrate the following:
- (1) the business is at least fifty-one percent owned by eligible owner(s) who are resident(s) of the state of Ohio or a reciprocal state (if certified pursuant to section 123.154(D) of the Revised Code) and citizen(s) of the United States of America;
 - (2) the at least fifty-one percent eligible owner(s) control the business;
 - (3) the business is a for-profit entity and has been in business for at least one year immediately preceding the date of application for certification;
 - (4) the at least fifty-one percent eligible owner(s)’s contributions of capital used to acquire ownership in the business must be “real and substantial” going beyond pro forma ownership and derived from individually and independently owned resources;
 - (5) the at least fifty-one percent eligible owner(s) must have the experience, expertise, and knowledge to operate the particular type of business requesting certification;
 - (a) Ownership interest obtained through a transfer or gift will be scrutinized to ensure sufficient consideration was provided, the ownership is unconditional, and the ownership was obtained for reasons other than obtaining certification into the program(s). De facto ownership is not

sufficient to qualify for the program(s). Even when business documents support the basic criteria, certification may be denied if the business's operations do not reflect the ownership shown on submitted documents; and

(Q) DAS/EOD may consider the following criteria to determine control, independence, and ownership of a business applying for certification:

- (1) do the at least fifty-one percent eligible owner(s) maintain and demonstrate the authority to direct the day-to-day management and policies of the business;
- (2) do the at least fifty-one percent eligible owner(s) hold the highest officer and managerial position(s) in the business (e.g., chief executive officer or president);
- (3) the differences in remuneration between the at least fifty-one percent eligible owner(s), other participants, or former owner(s) of the business when the former owner(s) remain involved directly or indirectly with the business;
- (4) where a business was formerly owned and/or controlled by non-eligible individual(s), and/or ownership and/or control was transferred to the eligible owner(s) and the former non-eligible owner(s) remain involved with the business in any capacity, the at least fifty-one percent eligible owner(s) now owning the business must demonstrate by clear and convincing evidence that the transfer of ownership and/or control was made for reasons other than obtaining certification as an MBE, EDGE, or WBE-certified business;
- (5) do the at least fifty-one percent eligible owner(s) have the final authority to direct or cause the direction of the management and policies of the business and to make day-to-day as well as long-term decisions on matters of management, policy, and operations;
- (6) do only the at least fifty-one percent eligible owner(s) have the authority to contractually bind the business;
- (7) is the business independent. An independent business is one where the viability of the business does not depend solely on its relationship with another business(es) or individual(s);
- (8) when state or local law requires that the at least fifty-one percent eligible owner(s) of the business hold a license or credential to own or control the business, then the at least fifty-one percent eligible owner(s) must possess the required license or credential;

- (9) when state or local law does not require that the at least fifty-one percent eligible owner(s) hold a license or credential to own or control a business, but the license or credential is required to perform at least some of the work that the business engages in, DAS/EOD will consider whether the control of the business is undermined based on the circumstances surrounding licensure or credentialing, such as if holding the license or credential provides any one employee or other owner(s) with de facto control over the business;
 - (10) does the business own the equipment necessary to perform its work. A business may be controlled by the at least fifty-one percent eligible owner(s) if the business leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with another party that compromises the independence of the business; and
 - (11) any other criteria DAS/EOD considers necessary.
- (R) Among the factors that may be considered by DAS/EOD when evaluating a non-eligible individual(s)'s or business(es)'s influence over the at least fifty-one percent eligible owner(s) or business are the following:
- (1) was the business's ownership transferred, gifted, or purchased within the last two years from a non-eligible owner(s);
 - (2) did the non-eligible individual(s) employ any of the at least fifty-one percent eligible owner(s) for any period during the three years prior to the date of application by the business;
 - (3) is or has the business or the at least fifty-one percent eligible owner(s) of the business been affiliated with another business in the same or similar type of business as the applicant business;
 - (4) do non-eligible individual(s) or business(es) exercise final authority over any aspect of the operations of the business;
 - (5) do non-eligible individual(s) or business(es) control the business directly and/or indirectly restrict the economic growth of the business;
 - (6) do non-eligible individual(s) or business(es) receive compensation from at least fifty-one percent eligible owner(s) or business for services (e.g., consultant, director, officer) or provide employee(s) to the business;
 - (7) do non-eligible individual(s) or business(es) exercise actual control or have the authority to control any aspects of the following (but not limited to) day-to-

day operations, finances, or management decisions and management policies of the business;

(8) do non-eligible individual(s) or business(es) hold a financial interest greater than forty-nine percent of the value of the company or has supplied the financing or loan(s) to purchase the business in amounts greater than the at least fifty-one percent eligible owner(s); and

(9) any other criteria DAS/EOD considers necessary.

(S) To demonstrate that a business applying for MBE, EDGE, or WBE certification meets the program criteria, the fifty-one percent eligible owner(s) upon request shall provide DAS/EOD the following information in the detail and manner prescribed by DAS/EOD:

(1) business structure information;

(2) previous three years of personal federal and the most recent state of Ohio tax returns including all schedules, W-2s, and/or 1099s;

(3) previous three years of the business's federal tax returns to include all schedules. If the business is in operation for less than three years; submission of federal tax returns to include all schedules for the years in business;

(4) business and personnel organizational information;

(5) business sales and tax information;

(6) personal information indicating citizenship and residence;

(7) documentation providing proof that the at least fifty-one percent eligible owner(s) meet the criteria of the program(s);

(8) If applying for EDGE certification, documentation demonstrating that the business is a "small business" as defined by the United States Small Business Administration in 13 C.F.R 121.201 (2020) and calculated in accordance with 13 C.F.R 121.101 through 121.107 (2020);

(9) if applying for a social disadvantage classification for EDGE based on race, color, ethnic origin, gender, physical disability, long-term residence in an environment isolated from the mainstream of American society, or a business location in a HUBZone, documentation demonstrating membership in the claimed category;

- (10) if applying for a social disadvantage classification for EDGE based on personal disadvantage not common to same or similar small business(es) or individual(s), a detailed statement and supporting evidentiary documentation proving social disadvantage;
 - (11) if applying for minority-owned classification for MBE, documentation demonstrating membership in the claimed category;
 - (12) if applying for women-owned classification for WBE, documentation demonstrating membership in the claimed category; and
 - (13) any other information or documents DAS/EOD considers necessary.
- (T) The Coordinator will consider all of the following when determining whether an at least fifty-one percent socially and economically disadvantaged owner(s) applying for EDGE certification exceeds the net worth threshold set by 13 C.F.R 124.104 (2020):
- (1) personal net worth of the at least fifty-one percent socially and economically disadvantaged owner(s) at the time of application for EDGE certification;
 - (2) three-year average of the at least fifty-one percent socially and economically disadvantaged owner(s)'s personal adjusted gross income;
 - (3) fair market value of all of the at least fifty-one percent socially and economically disadvantaged owner(s)'s total assets;
 - (4) asset transfers within the last two years prior to application including the following (but not limited to) transfers to members of the at least fifty-one percent socially and economically disadvantaged owner(s)'s immediate family, the economically disadvantaged business, trust accounts, and others as determined by the Coordinator;
 - (5) assets and net worth of the at least fifty-one percent socially and economically disadvantaged owner(s)'s spouse;
 - (6) similar factors considered by the United States Small Business Administration (SBA) when making individual determinations of economic and social disadvantage; and
 - (7) any other relevant information DAS/EOD considers necessary.

(U) The Coordinator may consider the following documents and/or factors to determine whether the business applying for EDGE certification exceeds the business size standards pursuant to rule 123:2-14-01(G) of the Administrative Code:

(1) annual accounts receivable;

(2) total business assets;

(3) business gross receipts for three or five years immediately prior to the date of the application for certification as necessary to make the calculation of annual receipts set forth in 13 C.F.R 121.104(c) (2020); and

(4) any other information DAS/EOD considers necessary.

(V) All MBE-certified businesses, except joint ventures, shall request classification code(s) which are consistent with current industry code(s) as determined by the Coordinator. No MBE-certified business may bid or be awarded a set-aside procurement opportunity without having been issued the appropriate classification code(s) for the products, supplies, or services specified in the procurement solicitation. All MBE-certified businesses shall possess:

(1) all licenses, permits, and authorities required by law, to perform the scope of work for each classification code(s) requested; and

(2) demonstrate proof of performance within each classification code(s) requested during sometime in the last twelve months immediately prior to requesting the classification code(s). The Coordinator will determine if the proof presented meets the requirements of DAS/EOD for issuing the business the requested classification code(s).

Effective:

Five Year Review (FYR) Dates:

WITHDRAWN ELECTRONICALLY

Certification

07/22/2020

Date

Promulgated Under:

119.03

Statutory Authority:

R.C. 123.151, 123.152, 123.154

Rule Amplifies:

R.C. 122.71(E), R.C. 123.151, 123.152, 123.154