

TO BE RESCINDED

123:2-15-01

Application for certification as a minority business enterprise.

(A) "Minority business enterprise" means an individual, partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, residents of Ohio, who are and have held themselves out as members of the following economically disadvantaged groups: Blacks, American Indians, Hispanics, and Asians.

(1) "Owned and controlled" means that:

- (a) If the minority business enterprise is a corporation, at least fifty-one per cent of each class of corporate stock is owned by persons who belong to one or more of the groups set forth in paragraphs (A)(6) to (A)(9) of this rule, that at least fifty-one per cent of the members of the board of directors and fifty-one per cent of the principal executive officers of the corporation are persons who belong to one or more of the groups set forth in paragraphs (A)(6) to (A)(9) of this rule, and that the rights of any stock class to ultimate control of the management and day-to-day operations of the business and the interest of any stock class in the capital, assets, profits and losses of the business are proportionate to the stock ownership of that class;
- (b) If the minority business enterprise is a partnership, at least fifty-one per cent of each class of partnership interest is owned by persons who belong to one or more of the groups set forth in paragraphs (A)(6) to (A)(9) of this rule, that such owners have ultimate control of the management and day-to-day operations of the business, and that such owners have an interest in the capital, assets, profits and losses of the business proportionate to their percentage of ownership;
- (c) If the minority business enterprise is a sole proprietorship, one hundred per cent of the business is owned by a person who belongs to one of the groups set forth in paragraphs (A)(6) to (A)(9) of this rule, that such owner has ultimate control over the management and day-to-day operations of the business, and that such owner has the entire interest in the capital, assets, profits and losses of the business, not including mortgages and other types of financial arrangements secured by assets or bonds secured by revenues;
- (d) If the minority business enterprise is a joint venture, at least fifty-one per cent of the joint venture is controlled by persons who have been previously certified as a minority business enterprise by the equal employment opportunity coordinator, that such persons have ultimate

control over the management and day-to-day operations of the joint venture, and that such persons have an interest in the capital, assets, profits and losses of the joint venture proportionate to their percentage of control.

- (2) Part ownership in an applicant concern by non-minority persons is permitted and may be necessary to ensure adequate capital and management for the concern's development. However, any property, equipment, supplies, services, and/or financial assistance or assistance which are sold, rented, or donated to the minority business enterprise must be reported to the state equal employment opportunity coordinator on an annual basis.
- (3) Persons who are members of one or more of the groups identified in paragraphs (A)(6) to (A)(9) of this rule must have actual control of the day-to-day operations of the minority business enterprise. Among the factors that shall be considered by the state equal employment opportunity coordinator in evaluating the non-minority influence are:
 - (a) Has the non-minority person(s) employed the owner of the applicant concern for any period of time during the three years prior to the date of application by the applicant for minority business enterprise status;
 - (b) Is the non-minority person(s) affiliated with another business in the same or similar type of business as the applicant concern;
 - (c) Does the non-minority person(s) exercise final authority over any aspect of the day-to-day operations of the applicant concern;
 - (d) Does the non-minority person(s) control over the applicant concern directly or indirectly restrict the economic growth of the company;
 - (e) The relative compensation received by the non-minority person(s) as compensation for services as a consultant, director, officer or employee rendered to the applicant concern.
- (4) The requirements of paragraph (A)(3) of this rule shall not apply to joint venture applicants.
- (5) Control and management

An applicant concern's management and daily business operations must be controlled by an owner(s) of the applicant concern who has (have) been determined to be a member of the groups listed in paragraphs (A)(6) to (A)(9) of this rule, and such owner(s) must own a greater percentage of the business

entity than any other owner, or in the case of a corporation, more voting stock than any other stockholder.

(a) Individuals who are not members of a group listed in paragraphs (A)(6) to (A)(9) of this rule who are stockholders, officers, directors or employees of an applicant for admission to the program shall not exercise actual, ultimate control or have the authority to control any aspects of the day-to-day operations, finances, or the management decisions and management policies of the applicant business concern. The existence of control or the authority to exercise control shall be determined by the facts of each case.

(b) Person(s) who are member(s) of one or more of the groups listed in paragraphs (A)(6) to (A)(9) of this rule, must be the principal manager(s) of the applicant concern. Such person(s) must possess the requisite management capabilities to exercise control of the applicant. This precludes outside employment or other business interests by the individual which conflict with the management of the firm or prevent it from achieving the objectives of its business development plan. This requirement does not preclude employment of persons who are not members of one of the groups listed in paragraphs (A)(6) to (A)(9) below in the management of the applicant concern.

(c) The requirement of this paragraph shall not apply to joint venture applicants.

(6) "Blacks" means all persons having origins in any of the black racial groups of Africa.

(7) "American Indians" means all persons who maintain membership with a federally recognized Indian tribe.

(8) "Hispanics" means all persons of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race.

(9) "Asians" means all persons having origins in any of the original people of the Far East, including China, Japan and Southeast Asia.

(B) Any minority business enterprise that desires to bid on a contract under division (C) (1) or (D)(1) of section 123.151 of the Revised Code or under division (A) or (B) of section 125.081 of the Revised Code or to be a minority business subcontractor or materialman under division (C)(2) or (D)(2) of section 123.151 of the Revised Code shall first apply with the equal employment opportunity coordinator of the department of administrative services for certification as a minority business enterprise.

- (1) The equal employment opportunity coordinator may require the minority business enterprise to submit the application form at least thirty calendar days prior to a bid opening for which the minority business enterprise intends to submit a bid.
- (2) All applicants except joint ventures shall request certification for business classifications which are consistent with current industry standards. The applicant shall possess:
 - (a) All licenses, permits, and authorities required by law, to perform the scope of work within each classification requested; and
 - (b) Demonstrated capability and/or experience within those classifications for a period of one year prior to the approval of that classification.
- (3) Any contractor awarded a contract authorized by section 123.15 or 123.151 of the Revised Code shall be responsible for the timely application for certification as a minority business enterprise of all subcontractors or materialmen that will participate in the contract.
- (4) Application shall be made on forms supplied by the office of the equal employment opportunity coordinator of the department of administrative services.
- (5) Minority business enterprises may do business as a corporation, a partnership, a sole proprietorship, or a joint venture. The application shall include, but not be limited to, a certification by the applicant that:
 - (a) If the minority business enterprise is a corporation:
 - (i) At least fifty-one per cent of the board of directors and at least fifty-one per cent of the principal executive officers are members of a group as set forth in paragraphs (A)(6) to (A)(9) of this rule, and that these persons have ultimate control over the management and day-to-day operations of the business, and
 - (ii) At least fifty-one per cent of each class of corporate stock is owned by persons who belong to one or more of the groups set forth in paragraphs (A)(6) to (A)(9) of this rule;
 - (b) If the minority business enterprise is a partnership:
 - (i) At least fifty-one per cent of each class of partnership interest is owned by partners who belong to a group as set forth in paragraphs (A)(6) to (A)(9) of this rule;

- (ii) That such owners have ultimate control over the management and day-to-day operations of the business;
- (c) If the minority business enterprise is a sole proprietorship:
 - (i) The sole proprietor is a member of a group as set forth in paragraphs (A)(6) to (A)(9) of this rule, and
 - (ii) The sole proprietor has ultimate control over the management and day-to-day operations of the business, and
 - (iii) The sole proprietor has the entire interest in the capital, assets, profits and losses of the business, not including mortgages and other types of financial arrangements secured by assets or bonds secured by revenues.
- (6) The applicant shall also certify that the following documents are available for inspection if requested by the equal employment opportunity coordinator:
 - (a) If the minority business enterprise is a corporation, a copy of the articles of incorporation, including the number of shares issued, a list of all stockholders, code of regulations, bylaws, minutes of all corporate meetings, and the corporation's financial statements reviewed by a certified public accountant or a public accountant for the past two fiscal years of the corporation, requested financial records and other documents;
 - (b) If the minority business enterprise is a partnership, a copy of the partnership agreement, and the partnership's financial statement reviewed by a certified public accountant or a public accountant for the immediate past two years, requested financial records and other documents;
 - (c) If the minority business enterprise is a sole proprietorship, relevant financial statements reviewed by a certified public accountant or a public accountant for the immediate past two years, requested financial records and other documents;
 - (d) If the minority business enterprise is a joint venture, a copy of the joint venture agreement. Such agreement must contain all of the following:
 - (i) Name of project and number of contract,
 - (ii) Location of project,
 - (iii) Bid date of project,

- (iv) Type of project (highway, building construction, goods and services),
 - (v) Description of job to be performed by minority business enterprise applicant,
 - (vi) Description of job to be performed by other joint venturers,
 - (vii) Percentage of the project to be subcontracted (if any) and actual work being done by the subcontractor, or goods and services to be performed or bought,
 - (viii) Approximate date contract will start if successful bidder and approximate completion date,
 - (ix) Type of equipment to be used on project, or goods and services to be supplied or performed,
 - (x) Work composition of both companies,
 - (xi) Equipment used that is owned by minority business enterprise applicant,
 - (xii) Equipment to be used that is owned by the other company in the joint venture and/or other joint venturers,
 - (xiii) Equipment that is to be leased by joint venture,
 - (xiv) Name of company from which joint venture will lease equipment,
 - (xv) Amount of contribution by each joint venturer.
- (e) Any change that affects the joint venture as originally approved by the equal employment opportunity coordinator makes the agreement voidable. The equal employment opportunity coordinator must be notified within three business days of that change for new approval.
- (f) Failure to produce any information required by laws, rules, regulations or the application form will be cause for disapproval of an application.
- (g) All financial statements and records submitted by the applicant to the equal employment opportunity coordinator shall be considered confidential and shall not be released to the public unless such documents are:
- (i) Used in an administrative hearing, or appeals thereto, regarding the certification or decertification of the applicant;

- (ii) Ordered to be released by a court of competent jurisdiction;
 - (iii) Approved by the applicant for release to the public.
 - (7) Failure to certify to any of the necessary information may be cause for disapproval of an application. If a minority business enterprise fails to have its financial statements reviewed by a certified public accountant or a public accountant as required by this rule, a financial review may be conducted by the equal employment opportunity coordinator in lieu of the required review.
 - (8) An applicant must have been in business for at least one year prior to being eligible for certification as a minority business enterprise. This requirement shall not apply to joint venture applicants.
 - (9) If a minority business enterprise 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 will be satisfied if the ownership and control of the business has remained substantially in the same persons.
 - (10) If a minority business enterprise has been in business more than one year, but less than two years, the certification of documents required by this rule need only to be given for the time period that the business has been in operation.
 - (11) In addition to the requirements of this rule, any applicant desiring to bid on a contract awarded by any agency other than the department of administrative services must meet any pre-qualification requirements of that agency.
 - (12) No person who is acting as an agent or intermediary in making contracts under section 123.151 of the Revised Code will be certified as a minority business enterprise.
 - (13) Upon receipt of an application containing all proper certifications, the coordinator shall review the application form to determine the applicant's eligibility as a minority business enterprise. If verification of any item is necessary, the equal employment opportunity coordinator may schedule an interview with the applicant to review documents certified to by the applicant and all other relevant information. Interviews may take place at the location of the business if the equal employment opportunity coordinator so determines.
- (C) If the application is approved by the equal employment opportunity coordinator, the applicant shall be notified verifying status as a minority business enterprise. Status as a minority business enterprise is subject to the continuing compliance of the business with this rule and to review, at any time, by the equal employment opportunity coordinator.

- (1) Certification shall be granted by the equal employment opportunity coordinator for a period not to exceed two years.
 - (2) The applicant shall be required to revise the application and information provided to the equal employment opportunity coordinator biennially. Such revisions shall also contain a yearly financial statement, all pertinent financial records and other financial documents as requested.
 - (3) If the applicant timely files the biennial revisions, then the applicant's present certification status shall remain in effect until such time as the equal employment opportunity coordinator determines whether certification should be continued or not.
 - (4) Any change in the business structure of the enterprise, the ownership and control of the enterprise or the type of business conducted by a certified minority business enterprise, shall require a reapplication for certification and a review by the coordinator.
- (D) The equal employment opportunity coordinator shall prepare and maintain a list of certified minority business enterprises. The coordinator will provide the list to all contracting authorities.
- (1) The list shall be composed of at least two categories: contractors and subcontractors, and vendors of goods and services.
 - (2) A minority business enterprise shall be included within each category in which they qualify, as indicated on their application for certification and determined by the equal employment opportunity coordinator.
- (E) If an application for certification as a minority business enterprise is not approved by the equal employment opportunity coordinator, the applicant shall be notified by mail and shall have recourse to all of the available remedies contained in Chapter 119. of the Revised Code.
- (F) If a certified minority business enterprise is decertified by the equal employment opportunity coordinator, the decertified enterprise shall be notified by mail and shall have recourse to all of the available remedies contained in Chapter 119. of the Revised Code.
- (G) Any person who intentionally misrepresents himself as owning, controlling, operating, or participating in a minority business enterprise for the purpose of obtaining contracts, subcontracts, or any other benefits under sections 123.151 and 125.081 of the Revised Code shall be guilty of theft by deception as provided in section 2913.02 of the Revised Code and such other provisions as may apply.

- (H) The Ohio residency requirement of this rule shall not apply to a minority business enterprise desiring to bid on a construction contract in any case where the federal government or any of its agencies furnishes by loan or grant all or part of the funds used in said construction contracts, provided the federal government or any of its agencies prescribes predetermined requirements for qualification as a minority business enterprise.

Effective:

Five Year Review (FYR) Dates: 7/10/2020

WITHDRAWN ELECTRONICALLY

Certification

07/22/2020

Date

Promulgated Under: 119.03
Statutory Authority: R.C. 123.151
Rule Amplifies: R.C. 122.71(E), R.C. 123.151
Prior Effective Dates: 04/16/1981, 11/15/1985, 05/10/2009