

# **BIRMINGHAM CONSTRUCTION INDUSTRY AUTHORITY**

## **GUIDELINES FOR CERTIFICATION & RECERTIFICATION OF MINORITY BUSINESS ENTERPRISES (MBE) AND DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

**ISSUED BY THE BIRMINGHAM CONSTRUCTION INDUSTRY AUTHORITY  
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# **CERTIFICATION AND RECERTIFICATION OF MBE/DBE FIRMS**

## **CERTIFICATION GUIDELINES**

The integrity of any MBE/DBE Program depends, to a large extent, upon the establishment of systematic procedures to ensure that only bona fide firms are certified to participate in the program. In order to ensure consistency with the established certification guidelines, the BCIA has adopted the following eligibility standards and procedures.

Although it is the applicant's responsibility to submit the required information in a notarized document, under penalty of perjury, it is the BCIA's responsibility to certify that the applicant's firm meets the eligibility to standards set forth. The burden of proof of eligibility shall rest with the applicant.

Applicants seeking certification under this program must provide a complete narrative explaining why they are socially and economically disadvantaged. Certification of applicants of other member groups who have not been identified by the BCIA to be socially and economically disadvantaged will be done on a case-by-case basis only.

The office of the Executive Director of the BCIA handles all of the initial applications for certification and re-certification and is responsible for compliance with the eligibility standards.

The Executive Director shall initially certify and annually re-certify MBE/DBE firms. The certification process shall consist of three separate procedures: (1) Waiver of Certification Procedure; (2) Initial Certification Procedure; and (3) Re-certification Procedure.

### **1. WAIVER OF CERTIFICATION PROCEDURE**

Any firm which is certified as meeting MBE/DBE criteria by the U.S. Department of Transportation or Urban Mass Transit Authority (UMTA) or has attained SBA-

8A status will be considered for waiver of the certification process upon presentation of its certificate of such status to the BCIA Executive Director. To apply for a waiver, one must complete an application for waiver, which must be submitted to the Executive Director who shall make a final and binding decision with respect to waiving the Authority's certification process.

## **2. INITIAL CERTIFICATION PROCEDURE**

MBE/DBE firms, which do not qualify for a waiver, may apply to the Executive Director for certification. The application packet for initial certification may be obtained from the BCIA office or at the company website at [www.bcial.org](http://www.bcial.org) and contains the following:

- Application for certification
- Capability Profile
- Guidelines

Under the criteria for certification, there is a rebuttal presumption that minority-owned and women-owned businesses are MBE/DBE firms. For the purposes of this Plan, the term "MBE/DBE" or other disadvantaged minorities, or in the case of a publicly owned business, at least 51% of the stock of said business owned by blacks, women or other disadvantaged minorities. This presumption applies only to businesses actually owned and managed by blacks, women, or other disadvantaged minorities for a credible period of time. The administrative rules and regulations, which define what time period constitutes a "credible" period, are contained in this document. Any business entity may be certified as a MBE/DBE firm upon a showing that it has suffered discrimination or is disadvantaged in the American Construction Industry. By initial certification and periodic re-certification, the BCIA program will focus upon businesses that continue to suffer a disadvantaged status in the Birmingham area. Beneficiaries of this program shall be MBE/DBE firms indigenous to the metropolitan Birmingham area and MBE/DBE firms, which establish offices (branches) and maintain a reasonable staff presence in the Birmingham area.

## **3. PROCEDURE FOR RENEWAL OF CERTIFICATION**

Each certified MBE/DBE must have its certification annually renewed in order to

participate in the program. Applications and fees for renewal of certification must be filed with the Executive Director by January 1st of each year. Denial of renewal of certification must be made in writing, and mailed by the Executive Director no later than March 1st. If there is no denial, then the applicant is automatically re-certified.

### **DEFINITIONS**

1. “Minority Business Enterprise” (MBE) is a business controlled by and a majority of which is owned by African Americans or blacks. Under the criteria for certification, there is a rebuttal presumption that black-owned businesses are MBE firms. For the purpose of this Plan, the term “MBE” means a business at least 51% of which is owned by blacks, or in the case of publicly owned business, at least 51% of the stock of said business is owned by blacks. This presumption applies only to businesses actually owned and managed by blacks. By initial certification and periodic re-certification, the Plan will focus upon businesses that continue to suffer a disadvantaged status in the Birmingham area. A showing that the firm no longer suffers a disadvantaged status in the Birmingham area will result in the denial of certification or re-certification. Beneficiaries of the Plan shall be MBE firms, which establish offices (branches) and maintain a reasonable staff presence in the Birmingham Standard Metropolitan Statistical Area.
2. “Disadvantaged Business Enterprise” (DBE) is defined as a business concern currently doing business and/or located in the Birmingham Metropolitan statistical area, meeting the following criteria:
  - a. Which is at least 51% owned, by one or more socially and economically disadvantaged individuals, or in the case of a publicly owned business, at least 51% of the stock is owned by disadvantaged individuals; and,
  - b. Whose management and daily business operations are controlled by one or more of the socially, and economically disadvantaged individuals who own it.
  - c. Under the criteria for certification, there is a rebuttal presumption that women-owned businesses are DBE firms. For the purpose of this Plan,

the term “DBE” mean a business at least 51% of which is owned by women or other disadvantageded minorities, or in the case of a publicly owned business, at least 51% of the stock of said business is owned by women or other socially and economically disadvantaged persons. This presumption applies only to businesses actually owned and managed on a day-to-day basis by women or other such disadvantaged person for credible period of time. Any business entity may be certified as a DBE firm upon showing that it has suffered discrimination or continues to suffer a disadvantaged status in the Birmingham area. Beneficiaries of this plan shall be DBE firms indigenous to the metropolitan Birmingham area, and DBE firms, which establish offices (branches) and maintain a reasonable staff presence in the Birmingham area.

3. “Socially Disadvantaged Individuals” means individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals or capabilities as a business.
4. “Economically Disadvantaged Individuals” means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business that are not socially disadvantaged.
5. A “credible” period of time means a sufficient period of time to show that the firm is not simply operating as a front for some person or entity, which does not qualify for certification as a DBE. An example would be that a business normally would not be certified merely because ownership was transferred from a husband to a wife.
6. A “front” means a firm, which is not truly owned and controlled by black person(s) or other socially and economically, disadvantaged individual(s).

### **MINORITY GROUP MEMBERSHIP**

In determining minority group membership, it is important that bona fide minority group membership be established on the basis of the individual’s claim that he or she is a member of a minority group and is so regarded by that particular minority community. In cases where the racial/ethnic origin is in question, the BCIA will require the applicant to prove his or her minority status. The following documents will be required as applicable:

1. Proof of membership and interaction in recognized minority organizations.
2. Birth certificates and/or driver's license.
3. Naturalization papers.
4. Indian tribal roll, tribal voter registration certificate, or other official documents.
5. History of individual having held himself/herself to be a member of the minority group or community (driver's license, school, medical and service records).
6. Recognition of applicant in the particular minority community as a minority through sworn and notarized statements from bona fide members of the community who are clearly disinterested parties.
7. History of individual's economic and social disadvantaged status as it relates to ethnic group membership.

### **BUSINESS SIZE AND STRUCTURE**

The BCIA will consider the size and financial capabilities of the firm for MBE/DBE eligibility as it relates to being economically disadvantaged.

### **OWNERSHIP, EXPERTISE, AND CONTROL**

The following standards shall be used by the BCIA in determining whether a firm is owned, managed and controlled by socially and economically disadvantaged individuals and therefore eligible to be certified as a MBE/DBE.

1. An eligible MBE/DBE shall be an independent business:
  - a. The ownership and control shall be real, substantial, and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The MBE/DBE will

not be dependent upon or connected with another business that is not a MBE/DBE, as evidenced by such items as multiple shared resources, common employees, common directors, or the payment of the MBE/DBE's payroll by a non-MBE/DBE firm.

- b. The MBE/DBE owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than the form of the arrangements.
- c. For purposes of certification as a business owned by a woman, ownership shall be measured as though not subject to the property interest of the applicant's spouse, if (A) both spouses certify in writing that the non-participating spouse relinquishes control over his property interest in the subject business and (B) the husband does not exercise any control over the business, including serving as a corporate director, being an employee involved in the functional mission of the business, or acting as a paid consultant to the business.
- d. Recognition of the business as a separate entity for tax purposes is not necessarily sufficient for recognition as a MBE/DBE. In determining whether a potential MBE/DBE is an independent business, the BCIA shall consider all relevant factors, including the date the business was established, method of acquisition, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing, and other relationships with non-MBE/DBE firms vary from industry practice.

- 2. The MBE/DBE owner(s) shall direct or cause the direction of the management and policies of the firm and make the day-to-day as well as major decisions on matters of management policy and operations.
  - a. The firm shall not be subject to any formal or informal restrictions, which limit the customary discretion of the MBE/DBE. There shall not be restrictions through, for example, bylaw provisions, partnership agreements, or charter requirements for cumulative

voting rights or otherwise that prevent the MBE/DBE owners from making a business decision for the firm.

- b. The MBE/DBE applicant who own the majority interest in or assets of a business must exercise independently the authority to control the business decisions of the business. Characteristic of such control is the authority to (1) sign bids and contracts, (2) make price negotiation decisions, (3) incur liabilities for the business, (4) independently make bank loans and lease agreements, (5) make personnel decisions, (6) establish policy for the business, (7) direct the management of the business, (8) independently make any financial decision on behalf of the business, and (9) sell or liquidate at will.

3. If the owners of the firm who are not MBE/DBE's are disproportionately responsible for the operation of the firm, then the firm is not controlled by the MBE/DBE and shall not be considered a MBE/DBE within the meaning of the BCIA Policy. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have ultimate power to hire and fire the managers can, for the purpose of the BCIA Policy, be considered as controlling the business.

4. All securities which constitute ownership and/or control by a corporation for purposes of establishing it as a MBE/DBE shall be held directly by the MBE/DBE. No securities held in trust, or by any guardian for a minor shall be considered as held by the MBE/DBE in determining the ownership and control of a corporation.

5. The contribution of capital or expertise by the MBE/DBE owners to acquire their interests in the firm shall be real and substantial. Evidence of the owner's expertise shall be submitted with the application for certification. Normally, the owner shall have demonstrable skills or knowledge of the field of endeavor in which certification is sought, including licenses where required.

Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not MBE/DBE's or the mere participation as an employee in actual terms, rather than as an owner.

6. In addition to the above standards, the BCIA shall closely scrutinize the following situations when determining the eligibility of newly formed firms:
  - a. Firms whose ownership and/or control have changed prior to or since the date of an advertised contract or proposal;
  - b. A previous and/or continuing employer-employee relationship between or among present owners.
  - c. MBE/DBE applicants who have been recently employed by a non-MBE/DBE firm in the same field of endeavor will be restricted by the BCIA from being certified or listed on contracts or agreements as a MBE/DBE firm for a period of one year.
7. A joint venture is eligible under the BCIA's policy provided the joint venture meets the standards for the eligible MBE/DBE set forth above and the MBE/DBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks, and profits of the joint venture.
8. A business requesting to be certified as a MBE/DBE or joint venture by the BCIA shall cooperate with the BCIA in supplying additional information, which may be requested in order to make a determination. Willful failure to supply the requested information in a timely manner will result in the BCIA rendering the application incomplete. MBE/DBE firms and joint venture applicants who willfully fail to provide the additional requested information will be prohibited from applying for certification for a six-month period.

### **LOCATION OF MBE/DBE FIRMS**

All applicants under this program must have a principal place of business located in an independent office or other type of facility conducive to the type of business for which that firm is seeking certification. If a MBE/DBE is primarily performing or operating at the location of a non-MBE/DBE firm in the same field of endeavor, then that MBE/DBE firm will not be considered an eligible MBE/DBE under this program.

Applicants whose offices are primarily housed in the confinements of their homes will be closely scrutinized per the nature of their business in ascertaining their eligibility.

### **RESTRICTIVE CERTIFICATION**

The BCIA may restrict the certification of the MBE/DBE to their expertise in their field of endeavor. The applicant must submit a resume of their operational experience in the field for which they seek certification. The BCIA will consider on a case-by-case basis the experience level required for certification. The BCIA will restrict the MBE/DBE applicant from being listed as a MBE/DBE subcontractor or participant on contracts or proposals by a non-MBE/DBE firm who shares or provides ownership interest in that MBE/DBE firm.

### **COMMERCIAL USEFUL FUNCTION**

The MBE/DBE shall perform a commercially useful function and is responsible for the execution of a distinct element of the work of a contract and must actually perform, manage, and supervise the work involved. Consistent with normal industry practices, a MBE/DBE may subcontract no more than forty nine percent of a contract being counted toward the applicable MBE/DBE participation goals. If the subcontract is of a significantly greater portion of the work than would be expected on the basis of normal industry practices, the MBE/DBE shall be presumed to not be performing a commercially useful function. Brokering in many instances will not be considered performing a commercially useful function.

### **DECERTIFICATION**

The BCIA reserves the right to revoke the certification of a MBE/DBE firm. The BCIA at any time during the certification or re-certification period of a MBE/DBE may audit the application and supporting documents of that firm at a location determined by the BCIA. Such audits may be conducted at the MBE/DBE office. The revoking of a MBE/DBE

certification will result in that firm being removed from the list of certified MBE/DBE's for a minimum period of two years.

The following are reasons for revoking certification or for refusing to re-certify a MBE/DBE.

- a. Certified MBE/DBE firms are joint ventures who are not performing a commercially useful function as required by this policy.
- b. MBE/DBE applicants submitting inaccurate, false, or incomplete information to gain certification or re-certification as a MBE/DBE.
- c. Third party information. (See challenges and complaints).
- d. The ownership or control of the business changes so that it no longer meets the eligibility standard established by these guidelines.
- e. Certified MBE/DBE's whose primary business provides an unfair advantage in the market place and is not conducive to meeting the independent business requirements of these guidelines, for certification.

All applications for waiver, certification, and re-certification shall be submitted to the BCIA's Executive Director. The determination of eligibility will be made by the Executive Director and sent to the applicant in writing within a reasonable period following receipt of the application.

MBE/DBE applicants who fail to provide requested information in a specified time will not be considered eligible for submission of an application for certification for a period not less than six months.

### **DENIAL OF CERTIFICATION OR RECERTIFICATION**

If the Executive Director denies certification or re-certification, then the applicant may appeal to the Board of Directors of the BCIA by submitting a written statement describing fully the basis for the appeal within two weeks of the receipt of the denial. The Board of Directors will then make a decision based upon the written submission and the file of the

Executive Director. The denial of certification or re-certification by the Executive Director shall be effective immediately. If there is no appeal, then the decision of the Executive Director is final and binding. If there is an appeal, the decision of the Board of Directors shall be final and binding and no appeal or challenge will be made thereto. The firm shall not participate in the MBE/DBE program and shall not be eligible to re-apply for certification until one (1) year from the date of the initial denial letter. A denial of certification or re-certification does not prohibit the applicant's firm from bidding on any contract.

### **RECERTIFICATION**

Once certified, a MBE/DBE shall update its certification annually by submitting an application for re-certification to the Executive Director of the BCIA no later than one (1) year following the date of initial certification. Failure to submit a re-certification application will automatically result in de-certification from the program. If at any time there is a change in ownership or control of the firm, the MBE/DBE shall submit a new certification application to the BCIA reflecting the change in ownership.

### **RECIPROCAL CERTIFICATION**

The BCIA reserves the right to make its own determination of certification, even though the firm has been certified by any other Federal, State, or local entity. Certification by other entities, including certification of 8(a) status by the SBA will be considered but will not be binding upon the BCIA or the Executive Director.[]

### **CHALLENGES AND COMPLAINTS**

Third parties who have reason to believe that another firm has been wrongly denied or granted certification as a MBE/DBE or joint venture may advise the BCIA. These allegations do not have to be in writing and the person(s) making the allegation shall receive anonymity, if requested, in order to avoid or reduce the possibility of reprisal or retaliation. Where such allegations are made directly to the BCIA, the BCIA will document it, investigate, and determine what action, if any, is warranted. Where the complaint involves criminal violations, referrals will be made to the appropriate legal enforcement authority to decide if further action is warranted.

## **DISCLOSURE OF INFORMATION**

The BCIA shall safeguard from disclosure to unauthorized persons information that reasonably may be regarded as confidential business information.

BCIA