

# Community Development Commission

## Minority and Women Business Enterprises

This document has been designed to establish policy and provide guidance for DuPage County's Community Development Commission (CDC) in recognizing Women/Minority Business Enterprise WMBE businesses as required by the Department of Housing and Urban Development.

Information will be obtained from the applicant's firm to determine if ownership is by protected class individuals (minorities and women); investment is by owner and the owner has operational and managerial control of the firm; the firm is free from any conversion rights, and the firm is legally owned and licensed.

### Ownership

For eligibility, a firm must be at least 51% owned by WMBE individuals. In the case of a corporation, such individuals must own at least 51% of each class of voting stock outstanding and 51% of the aggregate stock outstanding. For partnerships, 51% must be owned by the MBE/WBE managing partner and reflected in the firm's partnership agreement. The same is true for limited liability companies\*.

\* If the business is corporation located outside of the State of Illinois, also provide proof of Authority to transact Business. If the business is an LLC located outside of the State, also provide proof of Admission to Transact Business.

### Control

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

A WMBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the WMBE owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-WMBE partners, conditions precedent or subsequent, executory agreements, voting trusts, conversion rights, restrictions on or assignments of voting rights) that prevent the WMBE owners, without the cooperation or vote of any non-WMBE individual, from making any business decision of the firm.

The WMBE owners must possess the authority and power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on the matters of management, policy and operations.

The WMBE owner **must hold the highest officer position** in the company (i.e. chief executive officer or president).

In a corporation, WMBE owners **must control the board of directors**.

In a partnership, one or more WMBE owners must serve as a general partner, with control over all partnership decisions. NOTE: Individuals who are not WMBE may be involved in a WMBE but not possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

The WMBE owners of the firm may delegate various areas of management, policymaking or daily operations of the firm to other participants in the firm, regardless of whether these participants are WMBE individuals. Such delegation of authority must be revocable, and the WMBE owners in the firm's overall affairs must be such that the recipient can reasonably

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conclude that the WMBE owners actually exercise control over the firm's operations, management and policy.

The WMBE owners must have an overall understanding of the firm's operations and clearly possess managerial and technical competence and experience directly related to the type of business in which the firm is engaged. The WMBE owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The WMBE owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the WMBE persons who own and control a potential WMBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, recognition should not be denied solely on the ground that the person lacks the license or credential.

In order to be viewed as controlling a firm, a **WMBE owner cannot engage in outside employment or other business interests that conflict with the management of the firm** or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time that it is operating.

A WMBE individual may control a WMBE firm even though one or more of the individual's immediate family members (who themselves are not WMBE individuals) participate in the firm; however, the WMBE individual must overwhelmingly be the historical and current dominant or controlling influence.

If a firm was formerly owned and/or controlled by a non-WMBE individual (whether or not an immediate family member) and ownership and/or control were transferred to a WMBE individual, and the non-WMBE individual remains now owning the firm, he or she must demonstrate **that the transfer of ownership and/or control to the WMBE individual was made for reasons other than obtaining certification as a WMBE**; and the WMBE individual actually controls the management policy and operations of the firm.

In order for a partnership to be controlled by WMBE individuals, any non-WMBE partners must not have the power, without the specific written concurrence of the WMBE partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

The WMBE individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the WMBE individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

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### Miscellaneous

CDC will give consideration to whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the WMBE program.

A firm's evaluation must be based on present and historical circumstances.

WMBE firms and firms seeking WMBE recognition shall cooperate fully with CDC's request for information relevant to the recognition process. Failure or refusal to provide such information is grounds for administratively closing, denial or removal of recognition.

Only firms organized for profit may be eligible WMBE s. Not-for-profit organizations, even though controlled by WMBE individuals, are not eligible to be recognized as WMBE s.

An eligible WMBE firm must be owned by individuals who are WMBE. Except as stated here, a firm that is not owned by such individuals, but instead is owned by another firm – even by a WMBE firm – cannot be an eligible WMBE except as below

- If WMBE individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the subsidiary may be certified if it meets all the requirements.
- A subsidiary may be recognized only if there is cumulatively 51% ownership of the subsidiary by WMBE individuals. (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 WMBE individuals.)

A firm that is owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for recognition.

### Application Review

The firm's application must be complete and have notarized.

#### Minority/Woman Ownership

The applicant must certify that he/she is (WBE/MBE) a minority as defined by HUD, i.e.:

Black Americans  
Hispanic Americans  
Asian/Pacific Americans  
Hasidic Jews  
Women

Applicants must be U.S. Citizen or Permanent Resident.

Note: The names, race and sex that appear in/on various documents will be checked for conflicting information and to determine the protected class owner's control.

#### Ownership

The application will be reviewed to determine if 51% of ownership is by a minority or woman.

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Each owner must provide some evidence of payment, monetary or in kind, for his/her share of ownership. Examples of evidence include:

- Canceled checks
- Signed agreements
- Stock certificates (both sides)
- Shareholder agreements (if any)
- Partnership agreements (if any)
- Joint venture agreements (if any)

### WMBE Control

The type of information requested is to substantiate the applicant's statement of ownership and control. The reviewer will examine with particular attention to but not limited to names, race and sex, which appear in/on various documents; conflicting information and determination of minority/woman owner's control. Other items to be reviewed may include the following:

- Arrangements with non-protected class firms
- Articles of Incorporation verifying date of incorporation and original officers and director
- Corporate By-Laws stating duties of the directors and officers, voting rights of the stockholders and any restrictive language which may affect the minority or woman's control
- Shareholder agreements that affect WMBE owners' control if exercised individuals responsible for the decision making
- Resumes determining the education and working history
- Individuals who have the authority to sign checks, invoices, lease or purchase agreements
- Does the protected class owner continue to work for a non-protected class firm
- Who in the firm does the following:
  - Negotiates contracts
  - Negotiates loans
  - Prepares estimates
  - Makes financial decisions
  - Hire and fire management personnel
- Responsible for field supervision and/or authorizes purchase of major equipment

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Required Documentation (*X = Required*)

Corporation	LLC	Partnership	Proprietorship	
X	X	X	X	Birth Certificates/US Passport/Permanent Resident Card
X	X	X	X	Resume of principals of your company showing education, training and employment with dates
X	X	X	X	Licenses required by City, County and State
X		X	X	Office Rental or Lease or Rental Receipts
X	X	X	X	Equipment Rental or Lease Agreements or Rent Receipts
X	X	X	X	Six Cancelled Business Checks (Front and Back)
X	X	X	X	Three Signed Copies of Current Contracts and Related Purchase Orders
X	X	X	X	Employee Identification Number
X	X	X		Board of Directors
X	X*	X*		Copy of registered stock certificates(s) issued
X				Articles of Incorporation, including State certificate
X				Minutes of first corporate meeting
	X			Recorded Articles of Organization
	X			Filed Annual Report
X**		X	X	Assumed Name Certificate
X	X	X		Certificate of Good Standing
X***	X			Authority to Transact Business in the State of Illinois
	X ***			Authority to Transact Business in the State of Illinois

\* if applicable

\*\* if you are a corporation using a dba

\*\*\*If you are a business located outside of the State of Illinois

## Recognition

An email, including the web link to CDC WMBE list, will be sent with attached PDF signed by the CDC project Coordinator stating that this organization has been recognized, for the purposes of CDC's use, as a WMBE company. The business's name will be added to the CDC WMBE list, which is given out at CDC setup meetings.

# **Community Development Commission Minority and Women Business Enterprises**

## **Renewal**

Annually, a form letter will be sent requesting if WMBE status has stayed the same, changed, or if the organization is no longer interested in being on the CDC list. Included on this letter will be a deadline date. If no response is heard by this date, the firm's name will be removed from the CDC WMBE.

Following the review, the firm will receive notification of continued participation.