



OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

Office of Equity and Inclusion

Definitions

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Eligibility Standards

for the

Small, Minority and Disadvantaged Business

Enterprise Inclusion Program

DEFINITIONS

The following words, terms, phrases and abbreviations shall have the following meanings:

“Affiliate” means a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another person or entity constituting an affiliate, or an identity of interest between or among parties exists such that affiliation may be found. In determining Affiliation, the Commission shall consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether an applicant meets small business size criteria of this Policy for purposes of DBE and SBE certification. The Commission will follow the requirements of 13 C.F.R. Part 121, as amended, in applying this definition.

“Annual Gross Receipts” means the “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships), and does not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts.

“Broker” shall mean a person or entity that fills orders by purchasing or receiving supplies from a third party rather than out of its own existing inventory, and provides no Commercially Useful Function other than acting as a conduit between a supplier and the customer.

“Controlled” means actual operational and managerial control, responsibilities or obligations for the applicant with the authority to make daily business decisions, direct how business is conducted and manage general enterprise operations with Experience in specified industry classifications for a period of at least one year prior to the application. The principal manager(s) that direct business decisions must not have outside business interests or employment that conflict with the interests of the applicant.

“Disadvantaged Business Enterprise (DBE)” shall mean any sole proprietorship, partnership, corporation, limited liability company or Joint Venture having a physical presence in Ohio that is certified by the Commission as meeting each of the following requirements:

1. Social Disadvantage. A business at least Owned and Controlled by Socially Disadvantaged Individual(s); and

2. Economic Disadvantage. The business is Economically Disadvantaged, or headquartered in a Qualified Census Tract.

“Economically Disadvantaged” means a small business concern under the size standards established by the [U.S. Small Business Administration using the six digit "North American Industry Classification System"](#) under 13 CFR § 121.201 for the industry classification applicable to its area of Experience. Businesses may receive certification in multiple areas of Experience; however, exceeding the size standards for a given area of Experience will result in the loss of certification and participation credit as it applies to performing scopes of work within the area of Experience on Commission projects.

“Joint Venture” shall mean an association of two or more independent Bidders or Contractors formed to carry out a for-profit business enterprise in a single transaction or a series of transactions, for which, pursuant to a written agreement (A) the parties combine, pool, or integrate some of their assets with a view to mutual gain, but otherwise remain independent operations; and (B) a SBE, MBE or DBE has a legal and actual right or obligation, consistent with its equity share of the Joint Venture, to: (i) contribute to the operating capital of the Joint Venture; (ii) share in the operating profits or losses of the Contract and the Joint Venture; and (iii) to perform clearly defined services under the Contract in the name of the Joint Venture.

“Manufacturer” shall mean an individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, materials and/or equipment, or supplies equipment required under the Contract of the general character described by the specifications.

“Minority-Owned Business Enterprise (MBE)” shall mean any sole proprietorship, partnership, corporation, limited liability company, or Joint Venture that is certified by the Commission as a business having a physical presence in Ohio that is Owned and Controlled by one or more Minority Individuals for at least one year prior to certification

“Minority Individual” shall mean a natural person who is a citizen of the United States of America (or lawfully admitted permanent residents) that is a member of one of the following groups:

1. African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa.

2. Hispanic-Americans, which includes persons of Mexican, Puerto Rican, Cuban, Caribbean, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.

3. Native-Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

4. Asian-Americans, which includes persons whose origins are in any of the original peoples of the Far East, Southeast Asia, the islands of the Pacific or the Northern Marianas, or the Indian Subcontinent.

“Personal Net Worth” means the net value of the assets of an individual remaining after total liabilities are deducted. However, the assets do not include the individual's ownership interest in the business applicant or participant; or the individual's equity in his or her primary place of residence. Personal Net Worth includes: (a) all asset transfers within a two-year period, to the applicant business or any other business, and trust accounts; (b) the person's interest in any other business; (c) if married, half of all assets and liabilities held jointly with the individual's spouse, including, but not limited to bank accounts, insurance policies, retirement accounts, property and stocks and bonds.

“Owned” means having at least 51% equity interest in an applicant for at least one year prior to certification with an interest in its capital and earnings commensurate with the ownership stake.

“Socially Disadvantaged Individual” means a citizens of the United States of America (or lawfully admitted permanent residents) that are subjected to prejudices or bias because of their identification with a particular group without regard to their individual qualities and whose Personal Net Worth does not exceed one million three hundred and twenty thousand dollars. There is a rebuttable presumption that females, African-Americans or Blacks, Hispanic Americans, Native Americans, Asian-Americans, other minorities found to be disadvantaged by the federal Small Business Administration, are Socially Disadvantaged Individuals. Individuals with a physical or mental disability that has led to discriminatory practices against the person that has restricted professional acceptance, employment, or access to capital and credit, or a long term residence in a Qualified Census Tract may also qualify as Socially Disadvantaged. Social Disadvantage may also be based on a demonstration of personal experiences of substantial and chronic disadvantage not common to other individuals, and evidence of difficulty on entering or succeeding in the business world because of disadvantages such as limited access to education, unequal treatment in employment of promotional opportunities, limited access to credit or capital under commercially favorable circumstances or exclusion from business or professional organizations.

“Small Business Enterprise (SBE)” shall mean any sole proprietorship, partnership, corporation, limited liability company, or Joint Venture whose employees and/or annual receipts do not exceed 50% of the size standards established by the [U.S. Small Business Administration using the six digit "North American Industry Classification System"](#) under 13 CFR § 121.201 for the industry classification(s) applicable to its area of Experience

that is at least 51% Owned and Controlled by individual(s) whose personal net worth does not exceed one million three hundred and twenty thousand dollars.

“Qualified Census Tract” means a recognizable geographic region within the state of Ohio as a historically underutilized business zone ([HubZone](#)) established under 15 USC §362(p)(1) or an [enterprise zone](#) established under Chapter 5709 of the Ohio Revised Code, and that the Department of Administrative Services has recognized as having an average minimum household income less than eighty percent of the average non-metropolitan income of the state or has an unemployment rate of the geographic region that exceeds the annual unemployment rate of the state by more than one hundred forty percent.

ELIGIBILITY STANDARDS FOR **SBE, MBE, AND DBE CERTIFICATION**

The Office of Equity and Inclusion will apply the following standards when determining an applicant’s eligibility to participate in the Program. The determination of shall be within the sole discretion of Office of Equity and Inclusion, subject to review as herein provided. The applicant has the burden to prove that it meets the eligibility criteria set forth for certification.

A. MINORITY BUSINESS ENTERPRISE APPLICATION.

1. Fast Track Application. Businesses certified by the Ohio Department of Administrative Services, the City of Cleveland, the Northeast Ohio Regional Sewer District, or the Ohio Minority Suppliers Diversity Council as an MBE will receive recognition from the Commission as an MBE after receiving authentication of the certification with those entities through a “Fast Track” application to the Commission. The Commission’s Office of Equity and Inclusion may further recognize certifications by other entities as meeting the MBE eligibility requirements of the Program through Fast Track applications if the Program Manager determines that the certification standards of such entities are comparable to those required for certification under the Standard Application.

2. Standard Application. Any businesses that are not certified through those organizations recognized by the Fast Track application process may apply to the Program Manager for certification as a Minority Business Enterprise as follows:

- i. The application shall be made on forms supplied by the Program Manager.
- ii. The applicant shall demonstrate that it is:
 - a. Owned by Minority Individual(s); and

b. Controlled by Minority Individual(s). If an applicant 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 businesses have remained substantially in the same persons. This requirement shall not apply to joint venture applicants.

iii. Minority Business Enterprises may conduct business as a sole proprietorship, a corporation, a limited liability company, a partnership, or a joint venture. To be eligible for certification as an MBE, the application shall provide evidence that:

a. If the minority business enterprise applicant is a sole proprietorship:

(1) The sole proprietor is a Minority Individual; and

(2) the sole proprietor has ultimate control over the management and day-to-day operations of the business; and

(3) 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; and

(4) the applicant submitted true and accurate copies of all relevant financial statements reviewed or audited by a certified public accountant or tax returns for the immediate past two years, and will submit any additional financial records and other documents requested.

b. If the minority business enterprise applicant is a corporation:

(1) at least fifty-one percent of the board of directors and at least fifty-one percent of the principal executive officers are Minority Individuals, and that these persons have ultimate control over the management and day-to-day operations of the business, including but not limited to finances, management decisions and policies; and

(2) at least fifty-one percent of each class of corporate stock is owned by persons who are Minority Individuals; and

(3) the applicant submitted true and accurate copies of the articles of incorporation, including the number of shares issued, and a list of all stockholders, a copy of its code of regulations, bylaws, and financial statements audited or reviewed by a certified public accountant or tax returns for the past two fiscal years of the corporation, and will submit any additional financial records and other documents requested.

c. If the minority business enterprise applicant is a limited liability company:

(1) at least fifty-one percent of the members of the limited liability company are Minority Individuals; and

(2) at least fifty-one percent of the contributions of capital to the limited liability company are provided Minority Individuals that are members of the company; and

(3) the Minority Individuals that are members of the limited liability company have ultimate control over the management and day-to-day operations of the company, including, but not limited to, finances, management decisions and policies.

(4) the applicant submitted true and accurate copies of the articles of organization and operating agreement of the limited liability company, and a list of all its members, the corporation's financial statements audited or reviewed by a certified public accountant or tax returns for the past two fiscal years of the corporation, and will submit any additional financial records or other documents requested.

d. If the minority business enterprise applicant is a partnership:

(1) at least fifty-one per cent of each class of partnership interest is owned by partners who are Minority Individuals; and

(2) the Minority Individuals partners have ultimate control over the management and day-to-day operations of the business; and

(3) the applicant submitted true and accurate copies of the partnership agreement, and the partnership's financial statement audited or reviewed by a certified public accountant or tax returns for the immediate past two years, and will submit any other financial records or other documents requested.

e. If the minority business enterprise applicant is a joint venture:

(1) at least fifty-one percent of the joint venture is controlled by persons who have been previously certified as a Minority Business Enterprise by the Program Manager. Such MBE must 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) the applicant submitted a true and accurate copy of the joint venture agreement. Such agreement must contain the purpose of the joint venture, the responsibilities to be performed by the MBE, the responsibilities to be performed by other joint venturers, the amount of capital contribution by each joint venture, the percentage and scope of the project to be subcontracted or supplied through non-joint venturers.

f. If an applicant for minority business enterprise certification has been in business more than one year, but less than two years, the documents required need only to be given for the time period that the business has been in operation.

iv. Failure to certify or provide any of the necessary information may be cause for disapproval of an application. Failure to produce any information required by the Program Manager or the application form will be cause for disapproval of an application.

B. DISADVANTAGE BUSINESS ENTERPRISE APPLICATION.

1. Fast Track DBE Recognition. Businesses certified as a DBE by the Uniform Certification Program, by the Ohio Department of Administrative Services as an EDGE Business Enterprise, by the City of Cleveland as both a FBE and a CCSB, CSB or RCSB, or by the Northeast Ohio Regional Sewer District as a DBE will receive recognition from the Commission as a DBE through a “Fast Track” application after receiving authentication of the certification with those entities. The Commission’s Office of Equity and Inclusion may further recognize certifications by other entities as meeting the DBE eligibility requirements of the Program through Fast Track applications if the Program Manager determines that the certification standards of such entities are comparable to those required for certification under the Standard Application.

2. Standard DBE Application. Any businesses that are not certified through those organizations recognized by the Fast Track application process identified above may apply to the Program Manager for certification as a Disadvantaged Business Enterprise as follows:

i. The application shall be made on forms supplied by the Program Manager.

ii. The applicant shall demonstrate that it is:

a. Owned and Controlled by Socially Disadvantaged Individuals. If an applicant 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 businesses have remained substantially in the same persons. The one year requirement shall not apply to joint venture applicants.

(1) if applying based on race, color, ethnic origin, gender, disability, long-term residence in a qualified census, the applicant must provide information demonstrating membership in the claimed category; or

(2) if applying based on personal disadvantage not common to other small business owners, the applicant must provide information about the impediment and how the impediment has restricted professional acceptance, employment, or access to capital and credit.

b. Economic Disadvantage in its area(s) of Experience, or its headquarters being located in a Qualified Census Tract.

(1) if applying based on the Small Business Administration standards, the applicant must provide information about the areas of Expertise using the North America Industry Classification System categories and provide evidence of its Annual Gross Receipts.

(2) if applying based on its headquarters in a Qualified Census Tract, the applicant must provide information about the location of its principal office where its highest executive officers and highest level managers maintain their workspace and perform their respective executive and managerial functions and duties.

iii. Disadvantaged Business Enterprises may do business as a sole proprietorship, a corporation, a limited liability company, a partnership, or a joint venture. To be eligible for certification as an DBE, the application shall provide evidence that:

a. If the disadvantaged business enterprise applicant is a sole proprietorship:

(1) The sole proprietor is a Socially Disadvantaged Individual; and

(2) the sole proprietor has ultimate control over the management and day-to-day operations of the business; and

(3) the sole proprietor has the entire interest in the capital, assets, profits and losses of the applicant; and

(4) the applicant submitted true and accurate copies of all relevant financial statements audited or reviewed by a certified public accountant or tax returns for the immediate past two years, and will submit any additional financial records and other documents requested.

b. If the disadvantaged business enterprise applicant is a corporation:

(1) at least fifty-one percent of the board of directors and at least fifty-one percent of the principal executive officers are Socially Disadvantaged, and that these persons have ultimate control over the management and day-to-day operations of the business, including but not limited to finances, management decisions and policies; and

(2) at least fifty-one percent of each class of corporate stock is owned by persons who are Socially Disadvantaged; and

(3) the applicant submitted true and accurate copies of the articles of incorporation, including the number of shares issued, and a list of all stockholders, a copy of its code of regulations, bylaws, and financial statements audited or reviewed by a certified public accountant or tax returns for the past two fiscal years of the corporation, and will submit any additional financial records and other documents requested.

c. If the disadvantaged business enterprise applicant is a limited liability company:

(1) at least fifty-one percent of the members of the limited liability company are Socially Disadvantaged; and

(2) at least fifty-one percent of the contributions of capital to the limited liability company are provided by Socially Disadvantaged members of the company; and

(3) the Socially Disadvantaged members of the limited liability company have ultimate control over the management and day-to-day operations of the company, including, but not limited to, finances, management decisions and policies.

(4) the applicant submitted true and accurate copies of the articles of organization and operating agreement of the limited liability company, and a list of all its members, the corporation's financial statements audited or reviewed by a certified public accountant or tax returns for the past two fiscal years of the corporation, and will submit any additional financial records or other documents requested.

d. If the disadvantaged business enterprise applicant is a partnership:

(1) at least fifty-one per cent of each class of partnership interest is owned by partners who are Socially Disadvantaged Individuals; and

(2) the partners that are Socially Disadvantaged Individuals have ultimate control over the management and day-to-day operations of the business; and

(3) the applicant submitted true and accurate copies of the partnership agreement, and the partnership's financial statement audited or reviewed by a certified public accountant or tax returns for the immediate past two years, and will submit any other financial records or other documents requested.

e. If the socially disadvantaged business enterprise applicant is a joint venture:

(1) at least fifty-one percent of the joint venture is controlled by persons who have been previously certified as a Disadvantaged Business Enterprise by the Program Manager. Such DBE must 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) the applicant submitted a true and accurate copy of the joint venture agreement. Such agreement must contain the purpose of the joint venture, the responsibilities to be performed by the DBE, the responsibilities to be performed by other participants in the joint venture, the amount of capital contribution by each joint venture, the percentage and scope of the project to be subcontracted or supplied through non-joint ventures.

f. If an applicant for disadvantaged business enterprise certification has been in business more than one year, but less than two years, the documents required need only to be given for the time period that the business has been in operation.

vi. Failure to certify or provide any of the necessary information may be cause for disapproval of an application. Failure to produce any information required by the Program Manager or the application form will be cause for disapproval of an application.

C. SMALL BUSINESS ENTERPRISE APPLICATION.

1. Fast Track Application. Businesses certified as a DBE through the Uniform Certification Program, certified as an EDGE Business Enterprise by the Ohio Department of Administrative Services or certified as a SBE by the Ohio Department of Transportation will receive recognition from the Commission as a SBE through a “Fast Track” application after receiving authentication of the certification with those entities. The Commission’s Office of Equity and Inclusion may further recognize certifications by other entities as meeting the SBE eligibility requirements of the Program through Fast Track applications if the Program Manager determines that the certification standards of such entities are comparable to those required for certification under the Standard Application.

2. Standard Application. Any businesses that are not certified through those organizations recognized in the Fast Track application identified above may apply to the Program Manager for certification as a Small Business Enterprise as follows:

i. The application shall be made on forms supplied by the Program Manager.

ii. The applicant shall demonstrate that it is:

a. Independently Owned and Controlled without Affiliation with another entity or person for at least one year prior to making the application. If an applicant 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 businesses have remained substantially in the same persons. This requirement shall not apply to joint venture applicants.

b. generating Annual Gross Receipts or employing a number of employees below 50% of the Small Business Administration’s standards for the industry or fields of its Expertise using the North America Industry Classification System categories.

c. at least 51% Owned and Controlled by individual(s) whose personal net worth does not exceed one million three hundred and twenty thousand dollars.

iii. Small Business Enterprises may conduct business as a sole proprietorship, a corporation, a limited liability company, or a partnership. To be eligible for certification as a SBE, the application shall include, but not be limited to, evidence that:

a. If the small business enterprise applicant is a sole proprietorship:

(1) the sole proprietor has ultimate control over the management and day-to-day operations of the business; and

(2) 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; and

(3) the applicant submitted true and accurate copies of all relevant financial statements audited or reviewed by a certified public accountant or tax returns for the immediate past two years, and will submit any additional financial records and other documents requested.

b. If the small business enterprise applicant is a corporation:

(1) the board of directors and the principal executive officers are individuals that are independent and not ex officio members that serve the interests of an Affiliate, and that these persons have ultimate control over the management and day-to-day operations of the business, including but not limited to finances, management decisions and policies; and

(2) the applicant submitted true and accurate copies of the articles of incorporation, including the number of shares issued, and a list of all stockholders, a copy of its code of regulations, bylaws, and financial statements audited or reviewed by a certified public accountant or tax returns for the past two fiscal years of the corporation, and will submit any additional financial records and other documents requested.

c. If the small business enterprise applicant is a limited liability company:

(1) the members of the limited liability company are independent individuals having ultimate control over the management and day-to-day operations of the company, including, but not limited to, finances, management decisions and policies and are not ex officio members that serve the interests of an Affiliate; and

(2) the applicant submitted true and accurate copies of the articles of organization and operating agreement of the limited liability company, and a list of all its members, the corporation's financial statements audited or reviewed by a certified public accountant or tax returns for the past two fiscal years of the corporation, and will submit any additional financial records or other documents requested.

d. If the small business enterprise applicant is a partnership:

(1) each class of partnership interest is owned by independent individuals that have ultimate control over the management and day-to-day operations of the business and are not serving the interests of an Affiliate; and

(2) the applicant submitted true and accurate copies of the partnership agreement, and the partnership's financial statement audited or reviewed by a certified public accountant or tax returns for the immediate past two years, and will submit any other financial records or other documents requested.

e. If an applicant for small business enterprise certification has been in business more than one year, but less than two years, the documents required need only to be given for the time period that the business has been in operation.

iv. Failure to certify or provide any of the necessary information may be cause for disapproval of an application. Failure to produce any information required by the Program Manager or the application form will be cause for disapproval of an application.

D. REVIEW OF APPLICATIONS. Upon receipt of an application containing all proper certifications and required documents, the Program Manager shall review the application form to determine the applicant's eligibility for certification as a Minority Business Enterprise, Disadvantaged Business Enterprise and/or Small Business Enterprise. If verification of any item is necessary, the Program Manager may request additional documentation or support, schedule an interview with the applicant to review documents or may any other further inquiry to obtain all relevant information. Interviews may take place at the location of the business if Program Manager so determines.

1. Approval. If the Program Manager approves the application for certification as demonstrating the applicant meets the requirements for recognition as a Minority Business Enterprise, Disadvantaged Business Enterprise, and/or Small Business Enterprise, the applicant shall be notified and provided documentation verifying status as a MBE, DBE and/or SBE for a period not to exceed two years. Status as a MBE, DBE and/or SBE is subject to the continuing compliance of the business with these requirements and the review, at any time, by the Program Manager.

2. Modifications. Any change that affects the ownership, control or area of Experience as originally approved by the Program Manager makes the certification voidable. The Program Manager must receive notice within three business days of that change for new approval. 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 Program Manager.

3. Renewal. Each certified SBE, MBE and DBE shall be required to reapply for certification through a renewal application submitted to the Program Manager biennially. Such renewal applications shall contain a yearly financial statement or tax returns, all pertinent financial records and other financial documents as requested, and notarized affidavits certifying the continued eligibility for certification and any material changes to the business. If the applicant timely files the biennial renewal applications, then the applicant's present certification status shall remain in effect until such time as the Program Manager determines whether certification should be continued or not.

E. Certification Denial and Decertification.

1. Notwithstanding the ability of an applicant to meet these standards, the Commission reserves the right to deny SBE, MBE or DBE certification or decertify any business that is or has been:

i. In arrears or declared to be in default to the Commission upon any contract or debt, or has otherwise failed to perform faithfully, fully, and completely any previous contract with the Commission;

ii. In arrears or declared to be in material breach upon any contract, or has otherwise failed to substantially perform any previous contract; or

iii. In default on any obligation to the Commission under the Program.

2. The Commission shall decertify a firm that does not continuously meet the eligibility criteria. Decertification by another public entity shall create a prima facie case for decertification by the Commission. The challenged firm shall have the burden of proving that its certification with the Commission should be maintained.

3. If an applicant is denied certification or recertification, it may not reapply for certification for a period of one (1) year from the date of the notice of denial. An applicant whose application for certification or recertification is denied may appeal the denial by filing a hearing application to the General Counsel within thirty (30) calendar days after of the notice of denial. The General Counsel shall be the final arbiter of all challenges.