

# County of Erie and City of Buffalo Joint Certification Committee

## Rules and Regulations

### 1. Membership

A. The Minority Business Enterprises and Women Owned Business Enterprises (MBE/WBE) Officer for the County of Erie (County Coordinator), a person designated by the Buffalo Sewer Authority, a person designated by the City of Buffalo, a person designated by the Buffalo Municipal Housing Authority and a person designated by the Buffalo Board of Education, shall be members of the Joint Certification Committee (JCC).

B. Each of the above listed agencies shall designate an alternate member to serve in the event the person so designated by such agency is unable to attend meetings of the committee.

C. The Joint Certification Committee shall have a chair, who shall be a member of said committee.

### 2. Purpose

The purpose of the Joint Certification Committee is to certify bonafide Minority Business Enterprises and Women Owned Business Enterprises to achieve equity in contracting. This certification will be recognized by all participating municipalities, authorities, etc. Certification by the Joint Certification Committee will certify that the business enterprise in question is legitimately owned, operated and controlled by minority persons or by women.

### 3. Procedure for the submission of a certification application

A. The "Certification Application" is a detailed informational form required of an applicant by the Joint Certification Committee. The Application shall include pertinent documents and disclosure affidavit(s), which are to be completed and submitted to the five (5) Voting Members of the Joint Certification Committee.

B. Delivery of the completed "Certification Application" and all pertinent documents and disclosure affidavit(s) to all five (5) voting members shall be the responsibility of the applicant.

C. If additional information is needed to complete application, the affiant will be notified by the County Coordinator within ten (10) business days from the time application was received.

D. Only completed applications will be scheduled for certification meetings. A complete application is an application that has all the pertinent documents, specified on documents checklist (including signed copies of last two years of business and personal taxes), and any disclosure affidavit(s).

E. The affiant will be notified within ten (10) business days by mail of the date, time and place on which he or she is to be interviewed by the Joint Certification Committee.

F. If a business enterprise misses two (2) appointments for certification meeting without notifying the Joint Certification Committee, the business enterprise in question shall wait six (6) months and reapply for certification.

G. If a business enterprise is denied certification, the business enterprise shall wait one (1) year before reapplying for certification.

H. If a business enterprise's application is incomplete, the business enterprise shall complete the application within thirty (30) business days or the business enterprise shall start process again.

#### 4. Joint Certification Committee Meetings

The Joint Certification Committee meets on the Third Wednesday of every month except August. The Joint Certification Committee shall meet as often as necessary to execute its purpose, as stated herein. The Committee shall consider all completed applications for certification and re-certification which are submitted prior to the scheduled meeting.

#### 5. Criteria for Certification Standards & Eligibility

A business seeking certification as an MBE or WBE shall cooperate with the County of Erie and City of Buffalo Joint Certification Committee (JCC) in supplying additional information which may be requested in order to make a determination.

##### A. Eligibility Requirements

1. If applying for WBE certification, business must be at least 51% owned, controlled and operated by a woman or women.
2. If applying for MBE certification, business must be at least 51% owned, controlled and operated by someone in the following ethnic groups:

Black – persons having origin from any of the black African racial groups

Hispanic – person of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race

Asian- Pacific – persons having origins from Far East, Southeast Asia or the Pacific Islands

Asian Indian Subcontinent– persons having origins from the Indian subcontinent

Native Americans - persons having origins in any of the original peoples of North America. Applicant must show proof of ethnicity.

Dual certification is available to women business owners who are also a member of any of the above race and ethnic groups.

B. Certification Requirements

1. 1. The proposed enterprise must be an independent business concern and at least 51% is owned by minority group members/or women, who exercise control of that business and actively seeking contracts or orders and regularly and actively Performing business activities. The ownership must be real, substantial and continuing and minority and/or women owners must exercise the authority to independently control the day to day business decisions. The business cannot be owned by multiple entities, such as partnerships, ventures, etc.
2. The minority and/or women business owner must be able to show that he/she has exercised ownership authority to independently control the day to day business decisions for at least one year prior to applying for JCC certification and can provide that it has filed its first federal return under the owner/applicant's control.
3. The following standards are used in determining whether a firm is owned and controlled by one or more minorities or women. These elements of ownership must be clear and apparent for a firm to be considered eligible as an MBE or WBE.

(a) An eligible MBE or WBE shall be an independent business. The ownership and control by minorities or women shall be real, substantial and – continuing, and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The minority and women 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 form of arrangements. That the minority / women ownership has a knowledge and understanding of the day-to-day operations and of the business. The fact that a business is separately incorporated or is recognized as a separate entity for tax purposes is not necessarily sufficient to support the conclusion that the business is an independent entity entitled to MBE or WBE certification.

(b) The minority or woman owner(s) shall also possess the power to direct and to cause the direction of the management and policies of the firm, and to make day-to-day as well as major decisions on matters of management, policy, and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the minority or women owner(s). For example, there shall be no requirements or allowance in corporate bylaws, operating procedures, partnership agreements, shareholder agreements or charter for cumulative voting rights, or other voting arrangements, that prevent the minority or woman owner without the cooperation or vote of any owner who is not a minority or woman, from making a business decision for the firm.

(c) Where the firm's owner is legally required to possess the license in order for the firm to engage in the business in which the firm seeks to be qualified, the Minority or Women Business Enterprise (M/WBE) owner shall hold the appropriate license. In order for your company to engage in work in a specialized field that requires a license, you must have a full time (12 months) employee with the required license in that specialized field on your New York State 45 payroll. The M/WBE owner(s) shall, in fact, exercise direct control over the critical aspects of the business.

4. All securities which constitute ownership and/or control of a corporation for purposes of establishing it as an M/WBE shall be held directly by minorities or women. No securities held in trust, or by any guardian for a minor, shall be considered in determining M/WBE ownership or control of a corporation. The contribution of the minority / women owner must be proportionate to their equity interest in the business enterprise. The contribution of capital and expertise by the minority or women owners to acquire their interests in the firm shall be real and substantial. (Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not minorities or women, or the mere participation by minorities or women as an employee, or in any managerial capacity, rather than owner.)
5. The minority member / woman must devote time on a daily basis to the business.
6. There can be no restrictions put on the minority member or woman in the control of the business, bank accounts, negotiations, lease agreements, loan agreements, credit agreements, contracts, etc.
7. For the purpose of ownership, a trust fund is a legal entity in itself and cannot be counted as ownership.
8. The business cannot be a publicly held company.
9. The business cannot be a subsidiary or division of a parent company unless the parent company is deemed certifiable. The business cannot be owned by a holding company unless the holding is deemed Certifiable.
10. If a business enterprise is asking for certification as a supplier, business enterprise shall demonstrate that it owns, operates, and maintains a significant store or warehouse. Demonstrate that it has materials, supplies, articles or equipment which are bought, kept in stock and regularly sold or leased in the usual course of business. The firm must be an established regular business and under its own name, in the purchase, sale and/or lease of the products in question. Manufacturers can be classified as suppliers.
11. The business enterprise in question must have an operating office in the County of Erie or its neighboring Counties and/or must be registered in the County of Erie or its neighboring Counties (if sole proprietorship), if incorporated, it must be registered with New York State.
12. The business in question must be legitimately owned. The Joint Certification Committee reserves the right to make on-site visits, with or without notice, to both proposed and certified MBE and WBE. The Joint Certification Committee further reserves the right to inspect any documents which the Joint Certification Committee deems necessary to assist in the certification process.
13. Any franchise applying for certification will not be approved. Franchise operations are not eligible for certification.
14. The applicant firm cannot employ more than 300 full-time equivalent employees (FTE). The required supporting documentation for each firm shall be in the form of an affidavit. (See Attachments B).

15. Each minority or woman owner, upon whom certification is based, cannot have a personal net worth exceeding \$3.5 million after allowable deductions. The allowable deductions under the law are: 1) primary residence or the mortgage for that residence; 2) ownership interest in the applicant firm; and/or 3) up to \$500 thousand of any qualified retirement savings plan. The mandatory supporting documents are: 1) current personal federal and state taxes (including all schedules, statements and amendments); and, 2) a personal net worth affidavit (see Attachment A).

#### 6. Sanctions for fraud or misrepresentation

When it is found that, an MBE / WBE has committed fraud or misrepresented the truth, the enterprise in question will be denied certification or their certification will be revoked. The business enterprise in question will have thirty (30) business days to appeal decision as stated in Section (9).

The following are examples of circumstances which, if observed, should be carefully scrutinized by the JCC when reviewing a firm's certification application. While these circumstances will not automatically result in denial of the application, they may cast doubt on the firm's ownership and/or control by minorities and/or women and any such doubt should be resolved before certification is granted:

- (a) Shareholders, members, managerial employees or others associated with the firm who are not minorities or women appear to be disproportionately responsible for the operation of the firm.
- (b) The ownership and/or control of the firm have recently changed.
- (c) Owners of the firm also held an ownership interest in a firm which was previously denied certification by the JCC.
- (d) Family members, whether related by blood or through marriage, who are not women or minorities play major roles in the operation of the business or appear to be the primary possessors of the expertise necessary to operate the firm.
- (e) A prior employer of a minority or woman owner has a relationship with the firm which entails that employer's operational or financial involvement in the firm.
- (f) The firm has been denied M/WBE certification by another agency participating in the Certification Application Program based on its failure to establish ownership and control by minorities or women.

The above list is not intended to be all inclusive and any circumstance which casts doubt on the ownership and/or control of an applicant firm should be addressed during the certification process.

## 7. Term of Certification

- A. When the Joint Certification Committee certifies a business enterprise as a bona fide MBE or WBE, a certification letter will be sent by the County Coordinator within seven (7) business days to such business enterprise.
- B. The Joint Certification Committee's certification is issued for a period of three (3) years. The business enterprise will then have to renew the certification.
- C. **As of September 17, 2014, the Joint Certification Committee approved dual certification for minority women business owners. The JCC agreed to the following: A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal in regard to any contract or any goal set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.**
- D. The Joint Certification Committee does not issue temporary certification.
- E. Certification letter specifies the trade(s) for which a business enterprise is certified. Other trades performed by the business enterprise will not count toward local goals.

## 8. Procedures Governing Denial of Application for Certification or Revocation of Certification

- A. When a MBE / WBE application is denied, a notice will be sent within seven (7) business days to applicant informing applicant of the Joint Certification Committee's decision. If applicant does not agree with Committee's decision, the applicant then has thirty (30) business days to file a written request for a hearing.
- B. When it is found that an MBE or a WBE which has been previously certified by the Joint Certification Committee is in violation of one or more of the applicable Federal, State and/or local guidelines, the Joint Certification Committee may suspend certification of said MBE or WBE by sending Notice of Suspension to the business address of said MBE or WBE which is listed with the Joint Certification Committee. Said notice shall contain;
  - 1. Reason for suspension
  - 2. Notice of hearing and the date, time and place thereof and
  - 3. Information requested to be produced at said hearing.
- C. If the Joint Certification Committee is satisfied after said hearing that the suspended MBE / WBE is legitimately owned and operated in accordance with the applicable Federal, State and/or local guidelines, the Joint Certification Committee shall restore the suspended certification.
- D. If the Joint Certification Committee is not satisfied after said hearing that the MBE / WBE is legitimately owned and operated in accordance with said guidelines, the Joint Certification Committee may revoke the certification of said business enterprise.

- E. The JCC may revoke the certification of any firm that it concludes no longer meets the guidelines of MBE/WBE eligibility. MBE/WBE revocation may be initiated for any of the following reasons:
- The business has been legally dissolved.
  - The business entity's ownership and/or control by minorities or women have decreased to the extent that the business no longer meets the criteria for certification as an MBE or WBE.
  - The business entity's current certification eligibility is re-examined and the business is found not to meet MBE/WBE certification criteria.
  - Misrepresentation of the firm's ownership or control.
  - It is determined that the business entity made false statements or misrepresentations on its application for MBE or WBE certification.
  - Failure to maintain a regular, on-site presence and/or to exercise day-to-day financial and operational management, control and oversight of the work of a contract which the business entity has obtained either through negotiation with a prime contractor or through bidding pursuant to the purchase rules and regulations of the JCC Member Entities.
  - Failure to operate independently and to provide a commercially useful function on a subcontract which the business entity has been awarded by a firm which seeks to credit that subcontract toward the good faith M/WBE participation goals contained in its contract with any JCC Member Entities. Conduct that will be monitored closely in this context.
- F. Any business enterprise that is denied certification may reapply for certification under Section 3 herein.

#### 9. Appeals Process

- a. When a business enterprise has been denied certification or re-certification, such business enterprise has a right to appeal the decision made by the Joint Certification Committee.
- b. Business enterprise must send a written request to Joint Certification Committee within thirty (30) business days from receiving denial letter.
- c. Business enterprise's request will be reviewed by Joint Certification Committee and business enterprise will then be scheduled to appear in front of the committee.

#### 10. Confidentiality of Information

All information received by the Joint Certification Committee will be kept strictly confidential. All files are secured for privacy and protection.

## 11. Data Base of Certified MBE / WBE Companies

Once a business enterprise is certified by Joint Certification Committee, the business enterprise name and pertinent information will be listed on database of certified MBE / WBE companies within seven (7) business days. Such list can be found on the internet at <http://www2.erie.gov/eeo/>. The business enterprise shall notify Joint Certification Committee of any changes.

## 12. Process and Criteria for re-certification

### A. Process for re-certification

1. Any business enterprise interested in being re-certified, must submit a written request for re-certification as a MBE /WBE to the Joint Certification Committee.
2. The business enterprise must submit written request indicating whether any changes in ownership or operations have occurred and proof of those changes should be attached to request.
3. Tax returns (personal and business) for previous two (2) years must be signed and attached to request for review.
4. Any business enterprise requesting re-certification should submit proof that the business enterprise has been operational and that the business enterprise performed work in the certified field within the last three (3) years.
5. Joint Certification Committee will review request and documents submitted and make a determination on whether to issue a re-certification.
6. If re-certification is denied, the business enterprise has thirty (30) business days to appeal decision by following Joint Certification Rules & Regulations (Section 8 A).

### B. Criteria for re-certification

Any business enterprise applying for re-certification as a MBE / WBE must meet the following criteria:

1. The business enterprise in question continues to be an independent business concern and at least 51% continues to be owned by a minority or woman who continues to exercise control of that business.
2. The business enterprise in question has functioned and has been operational for the last three (3) years prior to applying for recertification.
3. The business enterprise in question has filed federal tax return for previous three (3) years.
4. The business enterprise in question continues to meet guidelines as specified in Joint Certification Committee Rules and Regulations. (Section 12 B).
5. The business owner responds appropriately to the recertification letter notifying them of time for recertification and provides all information identified and requested in the notification letter.



### 13. JCC Rules & Regulations Review Process

- a. Rules & Regulations can be amended by simple majority – currently (3/5) of existing Joint Certification Committee members.
- b. Rules & Regulations imply meeting operating rules are governed by Robert Rules of Order.
- c. Changes to Rules & Regulations are not retroactive. They become effective at an explicit time or next meeting of JCC, whichever is sooner.
- d. If any rule or regulation is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the rules and regulations shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such rule or regulation shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable.

14. Joint Certification Committee Rules & Regulations have been modified by the Joint Certification Committee as of December 20, 2017. The new Rules and Regulations for certifications and re-certifications will become effective as of January 1, 2018. If a business enterprise's re-certification date is after January 1, 2018, the new Rules and Regulations will apply to the company's recertification.

***Approved and Issued March 21, 2018***

**ATTACHMENT A: JCC - MWBE CERTIFICATION INDIVIDUAL PERSONAL NET WORTH AFFIDAVIT**

County of Erie and City of Buffalo – Joint Certification Committee

Each individual owner relied upon for certification as a minority or women-owned business enterprise (hereinafter “MWBE”) must complete this form and provide the applicable supplemental documentation as referenced below as part of the application for certification or recertification.

The personal net worth of each individual upon which certification is relied upon cannot exceed 3.5 million dollars. For certification purposes, personal net worth shall mean the aggregate adjusted net value of the assets of an individual remaining after total liabilities are deducted. Personal net worth includes the individual's share of assets held jointly with said individual's spouse but does not include the individual's ownership interest in the certified minority and women-owned business enterprise, the individual's equity in his or her primary residence, or up to five hundred thousand dollars of the present cash value of any qualified retirement savings plan or individual retirement account held by the individual less any penalties for early withdrawal.

I, \_\_\_\_\_, being duly sworn state that my social security number is: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ and I am a woman or a member of a minority group as defined in Article 15-A of the Executive Law. I own \_\_\_\_\_ percent of the equity in \_\_\_\_\_, the business applying for certification or re-certification as an M or WBE with the JCC. I have read the definition of net worth set forth in the statement above, and have calculated my net worth to be \$\_\_\_\_\_.

Further, I understand that I am required to provide, with this affidavit, a true, executed copy of my submitted federal and state personal tax returns including all statements and schedules as filed for the prior taxable year. I also understand that in the event my personal net worth exceeds 3.5 million dollars at the time of this application, I am also required to submit a complete Personal Financial Statement or Worksheet. I understand the tax returns I have submitted to the Joint Certification Committee as part of the certification or re-certification process must be true and correct copies of my personal tax returns and include all schedules, statements and amendments which I have submitted to the IRS and the state or, in the event that I have paid taxes in multiple jurisdictions, states where I have filed my most recent state income taxes. By signing below I am attesting that I am providing this as part of the application for certification or re-certification, and acknowledge any false statement made by the applicant will result in the denial of certification and is punishable as a Class E Felony under Section 175.35 of the Penal Law.

\_\_\_\_\_  
(Signature)  
(Print) State of New York, County of \_\_\_\_\_. On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,  
before me appeared (Name) \_\_\_\_\_ to  
me personally known, who being duly sworn, properly did execute the foregoing affidavit and did state that s/he was properly authorized by (Name of Firm) \_\_\_\_\_  
to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_  
Commission Expires \_\_\_\_\_

**Attachment B: JCC MWBE CERTIFICATION SMALL BUSINESS AFFIDAVIT**

County of Erie and City of Buffalo – Joint Certification Committee

Each applicant firm applying for certification as a minority or women-owned business enterprise (hereinafter “MWBE”) must complete this form and provide supporting documentation upon request as part of the application for certification or recertification. All applicant firms must be a business which has a significant business presence in the State, be independently owned and operated, and not dominant in its field, and in no event employs more than three hundred people.

I, \_\_\_\_\_, being a duly sworn authorized representative and owner of the applicant firm \_\_\_\_\_ state that my firm employs \_\_\_\_\_ full time equivalent employees and in no event exceed three hundred people. I attest my firm is not dominant in its field, and has a significant business presence in the state of New York as required under Article 15-A of the Executive Law. I understand that I may be required to provide, with this affidavit, a true, executed copy of the applicant firms federal and state tax returns including all statements and schedules as filed for the prior taxable year, payroll records, W2s and other related documentation to support the claims set forth in this affidavit.

By signing below I am attesting that I am providing this as part of the application for certification or recertification, and acknowledge any false statement made by the applicant will result in the denial of certification and is punishable as a Class E Felony under Section 175.35 of the Penal Law.

\_\_\_\_\_

(Signature) (Print)

State of New York, County of \_\_\_\_\_. On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me appeared

(Name) \_\_\_\_\_ to me personally known, who being duly Sworn, properly did execute the foregoing affidavit and did state that s/he was properly authorized by (Name of Firm)

\_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

Commission Expires \_\_\_\_\_