

The MBE and WBE Certification Process: Why and How

By Leslee M. Cohen and
Pamela Mitchell Belyn

More and more companies around the country are placing diversity at the top of their priority lists in order to more accurately reflect the population at large, both in terms of their own employee ranks and in the suppliers they engage. Against this backdrop, businesses should consider whether certification as a minority-owned business enterprise (MBE) and/or a women's business enterprise (WBE) makes sense for them.

In many instances, there is a strong business case to be made for certification, which delivers a variety of benefits to a business. On the most basic level, certification gives minority-owned and women's business enterprises the potential to secure significant contract awards. A growing number of large corporations are implementing supplier diversity initiatives that open up supply chains and capital historically reserved for large, majority-owned businesses.

Private-sector MBE/WBE certification is also an inexpensive and effective marketing tool that can help distinguish your business from other potential suppliers.

Meeting the Criteria

The first step to certification is to understand the accepted definitions of a minority-owned business or women's business enterprise. According to the leading governing bodies for each type of certification, the definitions are as follows:

- **An MBE (Minority-owned business enterprise)** is a for-profit enterprise, regardless of size, physically located in the United States or its trust territories, which is owned, operated and controlled by minority group members.

"Minority group members" are United States citizens who are Asian, Black, Hispanic and Native American. Ownership by minority individuals means the business is at least 51 percent owned by such individuals or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more such individuals. Further, the management and daily operations are controlled by those minority group members.

- *National Minority Supplier Development Council (NMSDC)*

- **A WBE (Women's business enterprise)** is an independent business concern that is at least 51 percent owned and controlled by one or more women who are U.S. citizens or Legal Resident Aliens; whose business formation and principal place of business are in the U.S. or its territories; and whose management and daily operation is controlled by one or more of the women owners.

- *Women's Business Enterprise National Council (WBENC)*

If you qualify under these definitions, you also need to determine if certification is a fit for your business. In general, it is best if your product or service is targeted toward large corporations and/or government agencies, and you have the working capital and infrastructure to service such large accounts. These large entities are more likely than smaller organizations to seek out MBE- or WBE-certified vendors in order to diversify their supplier bases.

Even if your business is the right model and size, and meets other certain minimum qualifications, the ethnic or gender makeup of the majority shareholders is not the only—or the most important—qualification.

Both certifying agencies consider a minimum of four additional criteria: **personal investment** of the minority or women shareholders, **actual control and authority** over the daily and strategic decisions of the enterprise by the minority or women shareholders, **independence** of the minority or women shareholders, and **type of business**. These criteria, while seemingly clear-cut, can lead to traps for the unwary.

Personal Investment

Certifying bodies look for personal investment in the business, including cash,

expertise and contribution of assets. They also want to ensure that the qualifying owner, as well as each qualifying shareholder, has a "real financial risk" associated with his or her investment. The theory is that an owner or shareholder with that level of commitment will actively work in the business to mitigate the attendant risk.

Cash is king in proving a personal investment; therefore, owners or shareholders who contribute cash to a business must disclose the origin. The WBENC requires a copy of the check that the qualifying female owner used to make her investment, while the NMSDC requires proof of stock or membership interest purchase. It is important to note that shares of stock or membership interest certificates issued in the name of the qualifying owner are insufficient without a financial paper trail.

If certification is part of your business plan, these documents should be maintained with the corporate record book.

Non-cash contributions, such as expertise or a customer list, receive serious consideration, but only if they can be valued independently and conservatively. Therefore, it is best to provide appropriate documentation with the application package.

For example, if you are using your project management expertise for your own company, consider consulting a third-party employment Web site to determine the going rate for a project manager in your geographic area. Alternatively, if you are submitting a customer list you developed, approximate the revenues that you have previously generated or expect to generate from this type of list.

Actual Control and Authority

Certifying bodies also look for actual control and ultimate authority over the business by the qualifying shareholders. This is a true "substance over form" examination that considers, among other things, whether the qualifying owner signs contracts, has check-writing authority and participates in corporate meetings. Both certifying bodies require that the qualifying owners unilaterally control day-to-day operations, as well as any other major decisions affecting the management, control or operations of the business.

Diversity continued on page 50

Specifically, the NMSDC stipulates that applicants must not be subject to formal or informal restrictions through by-laws, operating agreements, partnership agreements, charter requirements or other arrangements that prevent the minority owners from making a decision for the business “without the cooperation or vote of any owner who is not a minority.”

Independence

Of all the criteria reviewed for certification, independence is subject to the most scrutiny since it is the area most often abused by those seeking certification under false pretenses. The examination of independence is multifaceted and can encompass all aspects of a business’ operations.

Generally, certifying bodies expect the minority or women owners to perform the operations of the business without substantial reliance on financing or other resources of non-qualifying persons or business enterprises.

However, banks and other traditional financing sources are generally considered exceptions.

Companies with substantial ownership by non-qualifying persons are subject to an additional layer of examination. The rationale behind such scrutiny is to prevent non-minority and/or ineligible male business owners from reaping financial rewards or other benefits for giving a qualifying owner majority ownership on paper only.

Type of Business

Certain types of businesses are excluded from certification. For example, the NMSDC will only certify for-profit minority-owned enterprises that are operating entities. Holding companies, certain real estate investment firms and other non-operating entities are excluded from MBE certification.

Similarly, the WBENC will not certify women’s business enterprises that are agents, brokers, nonprofit organizations, manufacturer’s representatives or strategic alliances unless such arrangements are standard in the industry in which certification is sought.

Moreover, if a franchisee seeks WBE certification, the WBENC will scrutinize the franchise agreement to ensure that the female shareholder has managerial control and operational authority that is not unreasonably restricted.

Navigating the Process

Once you have determined your company qualifies, obtaining certification can be a confusing, contradictory and lengthy process. In fact, a large number of applicants

drop out due to the seemingly endless paperwork required, the difficult questions a business must answer and unfounded fears regarding site visits.

Through their local affiliates, however, the NMSDC and the WBENC have streamlined the process by implementing online applications and establishing transparent rules and regulations.

To begin the process, you must be prepared to remit confidential information such as capital structure, financials, customer data, contracts and other non-public information. Before doing so, you should take adequate steps to protect your confidential business information—including servicemarks, trademarks and copyrights.

The actual certification process entails completing an application and submitting it with a fee and requested documentation. From there, the certifying organization will review the application for completeness and schedule a site visit. Following the site visit, the certification committee will undertake a final evaluation and board vote. Once the vote has occurred, a letter of approval or denial will be sent to your business.

Insufficient application information, as well as incorrect or missing documentation, can delay or derail the certification of an otherwise qualifying business. Although appeals are generally allowed, they can take months to process and may not lead to a reversal of the initial certification denial. Further, if your business is denied certification, you must disclose that fact when reapplying or when submitting an application to a different certifying body.

Private Equity and Certification

In today’s environment, more private equity cash is flowing into MBE- and WBE-certified businesses, and it is heartening to see this investment in businesses historically overlooked by mainstream financial institutions. At the same time, it is important to carefully scrutinize how such investments may impact your business’ ability to retain certification.

If you have achieved certification or are contemplating certification in the near term, you should be careful to structure your private-equity investment in a way that does not compromise your MBE/WBE status. It is advisable to consider potential investments with equity funds that specialize in the MBE/WBE area, such as the Goldman Sachs Urban Investment Group.

A Bright Future

Large corporations and government entities have taken the lead in leveling the playing field for minorities and women in corporate America. In fact, according to the Center for Women’s Business Research, women are starting businesses in the United States at twice the rate of men. And as minorities and women continue to increase their buying power, MBE/WBE certification can provide a significant competitive advantage.

Paying careful attention to the application process and all related requirements are the first steps in getting your business certified and becoming a player on the national supplier stage.



Leslee M. Cohen is a Principal in the Business & Finance group at Chicago-based Much Shelist. She leads the firm’s Microcap practice and advises clients in a broad range of federal and state securities law matters, including corporate governance, ethics and executive compensation issues. She has represented publicly and privately held companies in connection with mergers and acquisitions, tender offers, public offerings and private placements. Cohen is also Co-Chair of the Much Shelist Women’s Initiative. She can be reached at 312.521.2707 or lcohen@muchshelist.com.



Pamela Mitchell Belyn is an Associate in the Business & Finance group at Chicago-based Much Shelist. She counsels entrepreneurs and privately held companies, as well as women- and minority-owned businesses, on a wide range of legal, policy and business issues. Belyn has particular experience in helping clients obtain certification as a women’s business enterprise (WBE), or minority-owned business enterprise (MBE). She also serves as Co-Chair of the Much Shelist Women’s Initiative. Belyn can be reached at 312.521.2783 or pbelyn@muchshelist.com.

MWIB

Diversity continued on page 52