

PUBLICATION

Minority-Owned Enterprises: An Overview

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Over the past decade, the number of minority-owned businesses has increased by 35%, due in large part to public and private programs available to assist certified minority business enterprises (MBE). This article discusses the requirements for certification as an MBE and provides an overview of the certification process and the advantages to becoming certified as an MBE.

What is an MBE?

An MBE is a special certification for a for-profit business owned and controlled by one or more members of an ethnic or racial minority group. In general, minority groups include African Americans, Latin Americans, Native Americans and Asian Americans.

There are two main requirements for an entity to be certified as an MBE. First, the MBE must be owned by one or more members of an ethnic or racial minority group. Ownership is established where one or more minority group members own at least 51% of each class of ownership interest in the entity. For example, suppose Corporation XYZ has 100 shares of voting stock and 100 shares of non-voting stock. XYZ has two shareholders, John (a minority group member) and Jack (a non-minority group member). If John owns 51 shares of the voting stock and 51 shares of the non-voting stock, XYZ should meet the ownership requirement for certification as an MBE because a minority group member owns 51% of each class of company stock. Now suppose that John owns 100 shares of the non-voting stock and 2 shares of the voting stock. Even though John owns 51% of all the outstanding shares of XYZ (102 out of 200), he does not own 51% of each class of stock of XYZ; therefore, XYZ should not meet the ownership requirements for certification as an MBE.

The second requirement for certification as an MBE is that one or more minority group members must control the day-to-day operations of the entity. While ownership, for purposes of MBE certification, is fairly easy to determine, control is determined by each entity's specific facts and circumstances. In general, one or more minority group members must be capable of running most, if not all, aspects of the business and should have control over the day-to-day operations of the business. In businesses that require technical expertise, the minority group member is not required to have technical expertise; however, the minority group member must show that he or she has ultimate managerial or supervisory control over those individuals with such technical expertise. At a minimum, a minority group member should hold the highest office of the entity; however, sporadic, inconsequential managerial tasks alone will probably not meet the control requirement for certification as an MBE.

For example, suppose Corporation XYZ manufactures widgets. John (a minority group member) is the chief executive officer of XYZ and has control over all operations of XYZ. In addition, John has 25 years of experience in the widget manufacturing industry. Jack (a non-minority group member) is the chief operations officer of XYZ and also has control over the manufacturing operations of XYZ; however, Jack reports directly to John and John may veto any decision of Jack. Under these facts, XYZ would probably meet the control requirement for certification as an MBE. Now suppose that John is the chief executive officer, but has no experience in the widget manufacturing industry. In addition, John is only in charge of the office administration and does not have managerial control over Jack. Under these facts, XYZ would probably not be classified as an MBE.

Certification

While some government agencies and private companies may allow an entity to "self-certify," most MBEs are certified by a private-certification company or through a government agency. In general, the private-certification company (or government agency) will conduct an audit of the company to make sure it has met the ownership and control requirements for certification. The private certification company (or government agency) will review the MBE's balance sheet and financial statements, the MBE's corporate records, and agreements between the owners and the MBE (including any restrictive transfer or buy-sell agreements and employment agreements). In addition, the private certification company (or government agency) will generally conduct an on-site review of the MBE.

Which certification approach an MBE uses depends on the type of business the MBE conducts. For example, if Corporation XYZ only does subcontract work for State A agency and State A agency conducts its own certification process, there would be no reason for XYZ to obtain private certification. However, many companies conduct business with both government agencies and private agencies and may find it beneficial to become certified through a private-certification company. There are a number of private-certification companies for MBEs; however, many private companies and state agencies may have a relationship with a specific private-certification company. Therefore, it may be wise for an MBE to talk to its customers and clients to determine which private-certification company, if any, they prefer.

Advantages

There are number of advantages to being certified as an MBE. The most important advantage is the expanded business opportunities for MBEs. For example, many federal, state and local government agencies have special programs to encourage contracting with certain certified MBEs, and federal prime contractors are required to establish goals and plans for subcontracting with certain certified MBEs. In addition, a number of private corporations such as Wachovia, Nissan and Apple Computer have implemented supplier diversity programs to ensure a diverse supplier base. Another advantage to being classified as an MBE is that there are a number of grants and special loan programs specifically geared towards MBEs. Finally, there are a number of government-sponsored and private start-up assistance programs and other educational programs specifically for MBEs.