

**100 CERTIFICATION RULES**

**100.1** The City of Orlando’s MBE and Blueprint Division staff will ensure that companies applying for certification are in compliance with the definitions for minority and women-owned business enterprises as set forth in Chapter 57. Articles II and III of the Orlando City Code. This is done by evaluation and analysis of submitted application data and with interviews and site inspections, as appropriate.

**100.2** The MBE and Blueprint Division staff shall review all applications and CERTIFY minority and female ownership and control in accordance with established guidelines. All documentation supplied by applicants and staff are within the scope of the Public Records Act and thus open for public review.

**101 DEFINITION**

**101.1** A family member is defined as follows:

One who is related to an individual, as father, mother, son, daughter, brother, sister, uncle, aunt, grandfather, grandmother, cousin, nephew, niece, husband, wife, father-in- law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister. An individual's cohabitant shall be considered a family member for the purpose of these rules.

**102 APPLICATION FOR CERTIFICATION**

**102.1** All applications for certification must meet the following requirements in order to be accepted for City review:

- (a) All application forms must be completely filled out.
- (b) All required documentation must be supplied within the specified time period as set by staff and so documented to the attention of the applicant; and
- (c) The application must be verified by the applicant on the affidavit form supplied by the City.

**102.2** Any application which does not meet the requirements for filing set forth in Subsection 102.1 shall not be accepted for filing by the City.

**102.3** Upon receipt of an application, the MBE and Blueprint Division staff will conduct a preliminary review of the submission for compliance with the requirements of Subsection 102.1 and take one of the following actions:

- (a) If the application is complete, it will be accepted for City review;
- (b) If the application is substantially incomplete or lacks the required verification, it will be returned to the applicant with a notice indicating the

need for additional action, or materials, in order for the application to be accepted for review; and

- (c) If the application is incomplete, but the omissions are minor, the staff may hold the application open for a reasonable time period to be established by the MBE and Blueprint Division Manager pending receipt of all remaining materials required for acceptance. In such cases, the applicant will be given notice that the application has not been accepted and the need for timely submission of additional materials in order for the application to be accepted for review.

**102.4** The MBE and Blueprint Division staff may hold interviews or discussions with an applicant or applicant's representative as part of the preliminary review process in order to assist the applicant in filling the application requirements of this section.

**102.5** Upon final acceptance of an application, the MBE and Blueprint Division staff will conduct a full review and analysis of the application. This review process may include interviews and discussions with the applicant or applicant's representative, requests for the submission of additional documentation or information, and an on-site inspection by the MBE and Blueprint Division staff.

**102.6** The staff shall review the books and records of the applicant. Each applicant shall be required to grant permission for such a review on the application form submitted to the City.

**102.7** Upon completion of the staff review, the MBE and Blueprint Division staff shall prepare a report setting forth their findings. The report and the application shall be submitted to the MBE and Blueprint Division Manager.

**102.8** Certified Minority or Women-Owned Business Enterprise are businesses who have applied for and been granted Minority or Women-Owned status by the City.

**102.9** Dual Minority/Women-Owned Status may be granted to companies that meet the established criteria for both categories. Only women who are minority group members as defined in Rule 113 and who possess at least 51% ownership and independent control of the company may obtain dual status. Prime Contractors may not claim as part of their participation, both MBE credit and WBE credit for the same firm. When assigned dual certification of M/WBE, the Prime Contractor must decide on one classification for the credit; that classification being either MBE or WBE for a given contract.

**102.10** The approval of an application will be in a designated commodity/business product line or service. The certification of an M/WBE in a given product or service does not automatically certify that firm in any other area. Should the M/WBE desire to expand to a new area of business beyond that in which certification was originally granted, the new information must be submitted and approved by the MBE and Blueprint Division staff using the same criteria for approval as any original

application for certification with this exception. A City Certified M/WBE may apply for certification to a new area of business for which the owner or owners do not hold the required licenses or certification so long as the M/WBE can prove it has been doing business in said area for no less than six months prior to the date of application (to a new area of business). Examples of proof of “doing business” may include but are not limited to copies of contracts the M/WBE has had to perform work or provide services in the new area of business, or copies of proposals or bids submitted in pursuit of contracts for the new area of business.

**102.11** Initial certification shall be for a period of one year. Subsequent renewals will be granted for a period of two years; however, the staff may be required to perform a site visit or request additional information to verify the purported status of a company to ensure that the firm is in compliance with City of Orlando's Certification Rules and Regulations, at any time during the Certified period.

### **103 DENIAL OF CERTIFICATION**

**103.1** The MBE and Blueprint Division staff will deny certification as a minority or woman owned business enterprise to any business entity which fails to meet the requirements of these rules and/or Chapter 57 of the Orlando City Code.

**103.2** The MBE and Blueprint Division staff may base its denial of certification on any of the following grounds:

- (a) Failure to qualify as a minority or woman owned business enterprise under the eligibility provisions of these rules, Chapter 57 of the Orlando City Code, or prevailing state and federal statutes;
- (b) Failure to provide sufficient information to the MBE and Blueprint Division staff on which a determination of eligibility can be based;
- (c) Refusal to permit on-site inspections by the MBE and Blueprint Division staff; or
- (d) Refusal to comply with a reasonable City request for information, data, or access to records pertinent to the application for certification within the time period specified by the MBE and Blueprint Division staff.
- (e) Fraud, deceit, and submission of misinformation for the purpose of obtaining M/WBE status, including the substantially inaccurate or incomplete ownership, financial, management, or other information in connection with the application.

**103.3** If certification is denied, the MBE and Blueprint Division Manager shall send written notification to the applicant within ten (10) days of the denial along with the reasons for the denial. Notice of denial shall include notice of the right to appeal.

**103.4** A hearing before the Certification Appeals Board to appeal the denial of

certification may be obtained by filing a written request to the MBE and Blueprint Division Manager for a hearing within ten (10) days of the receipt of the notice of denial.

**103.5** Firms denied certification shall not be able to reapply for a period of six (6) months from the date of denial, or if appealed, the date the decision to deny is upheld. If a firm is denied twice within a year they shall not be able to reapply for a period of one (1) year from the date of the second denial, or if appealed, the date of the decision to deny is upheld.

**103.6** Firms, or individuals within a firm, which are denied certification, are prohibited from re-organizing under a different name and status purely to circumvent the decision of the MBE and Blueprint Division staff.

#### **104 RENEWAL OF CERTIFICATION**

**104.1** Application for renewal of certification must be submitted to the City not less than sixty (60) days prior to the date of expiration of the existing certification.

**104.2** Applications for renewal of certification shall meet all of the requirements set forth in Chapter 57 of the Orlando City Code and all the requirements set forth in these Rules which are in effect at the time of renewal of certification. The MBE and Blueprint Division staff will deny recertification as a minority and/or woman- owned business enterprise to any business which fails to meet the requirements of these rules and/or Chapter 57 of the Orlando City Code at the time of renewal of certification. Applications shall include all information, documents, other data, and verification updated to the date of the application for renewal.

**104.3** The MBE and Blueprint Division staff may base its denial of recertification on any of the following grounds:

- (a) Failure to qualify as a minority or woman-owned business enterprise under the eligibility provisions of these rules, Chapter 57 of the Orlando City Code, or prevailing state and federal statutes;
- (b) Failure to provide sufficient information to the MBE and Blueprint Division staff on which a determination of eligibility can be based;
- (c) Refusal to permit on-site inspections by the MBE and Blueprint Division staff;
- (d) Refusal to comply with a reasonable City request for information, data, or access to records pertinent to the application for recertification within the time period specified by the MBE and Blueprint Division staff; or
- (e) Fraud, deceit, and submission of misinformation for the purpose of maintaining M/WBE status, including substantially inaccurate or incomplete ownership, financial, management, or other information in connection with the application.

**104.4** Approved applications for renewal of certification status shall be for a period of two years.

**105 COMPLIANCE REVIEW**

**105.1** The City may periodically review the practices and status of a certified MBE or WBE to determine whether it continues to meet the eligibility requirements for certification and is conducting its business activities in accordance with these requirements. This review may be initiated by the MBE and Blueprint Division staff or upon receipt of an inquiry or complaint from any person or the report of an alleged violation from a government agency.

**105.2** Compliance review may include, but not be limited to, monitoring reports, information submitted by agencies or MWBE's, on-site visits; audits of the M/WBE's books and records, and interviews and discussion conducted by the MBE and Blueprint Division staff.

**105.3** If the MBE and Blueprint Division staff discovers what appears to be correctable non-compliance as a result of the compliance review, it may seek compliance by the M/WBE prior to instituting further proceedings. In such cases, the MBE and Blueprint Division staff shall inform the M/WBE of the apparent non-compliance and recommend steps to be taken to correct the deficiencies. The staff may enter into discussions with the MBE or WBE to attempt to resolve the compliance problem(s) informally.

**105.4** If the above-stated compliance procedures result in the correction of the apparent deficiencies the MBE and Blueprint Division staff shall make a report to the MBE and Blueprint Division Manager which includes the compliance review findings, the steps taken to correct any deficiencies and the current status of the Company.

**105.5** If the above-stated procedures do not result in the correction of the apparent deficiencies, or if the non-compliance does not appear to the MBE and Blueprint Division staff to be correctable, the MBE and Blueprint Division Manager shall prepare and submit a report to the Certification Appeals Board setting forth its findings.

**105.6** Upon receipt of the compliance report, submitted as stated in Subsection 105.5, the Certification Appeals Board shall conduct a hearing at which the M/WBE shall be allowed to appear, present evidence and witnesses, and cross-examine adverse witnesses. The Certification Appeals Board shall review said report and the accompanying file at the hearing, which shall be conducted pursuant to Section 108. At such hearing, the Certification Appeals Board shall take one of the following actions:

- (a) Revoke the certification of the MWBE; or
- (b) Not revoke the certification of the M/WBE; or
- (c) Request additional information to be submitted by the M/WBE and

continue the hearing to a later date as determined by the Certification Appeals Board.

## **106 REVOCATION OF CERTIFICATION**

**106.1** Revocation of certification may be adopted by the Certification Appeals Board on any of the following grounds:

- (a) Fraud, deceit and/or providing misinformation by the M/WBE in obtaining certification, including the furnishing of substantially inaccurate or incomplete ownership, financial, or other information in connection with the application;
- (b) Failure by the M/WBE to report changes in the status or activities of the business entity or its minority/women membership which affects the M/WBE's eligibility for certification;
- (c) Noncompliance by the M/WBE with any provisions of Chapter 57 of the Orlando City Code or these rules.

**106.2** Companies whose M/WBE status is revoked shall not be able to reapply for a period of six months from date of revocation or, if appealed, the date the decision to revoke is upheld.

**106.3** The City shall give written notice of revocation to the M/WBE. The notice shall set forth the grounds and reasons for the revocation, the period of revocation, and the right to appeal.

**106.4** A hearing before the Certification Appeals Board to appeal the revocation of certification may be obtained by filing a written request to the MBE and Blueprint Division Manager for a hearing within ten (10) days of the receipt of the notice of revocation.

**106.5** Hearings shall be conducted in accordance with the procedures set forth in Section 108.

**106.6** Any company scheduled for a hearing on revocation before the Certification Appeals Board, shall not be granted a postponement in excess of thirty (30) days.

## **107 DENIAL OF RECERTIFICATION**

**107.1** The MBE and Blueprint Division staff may deny recertification of an M/WBE on one or more of the grounds set forth in Subsection 103.2 or Subsection 106.1.

**107.2** If recertification is denied, the MBE and Blueprint Division staff shall notify the applicant of the denial in writing along with the grounds and specific reasons for the denial. Notice of denial shall also include notice of the right to appeal.

**107.3** A hearing before the Certification Appeals Board to appeal the denial of recertification may be obtained by filing a written request to the MBE and Blueprint

Division Manager for a hearing within ten (10) days of the receipt of the notice of denial.

**107.4** Firms denied recertification shall not be able to reapply for a period of six (6) months from the date of denial, or if appealed, the date the decision to deny is upheld. If a firm is denied twice within a year they shall not be able to reapply for a period of one (1) year from the date of the second denial.

**107.5** Firms, or individuals within a firm, which are denied recertification, are prohibited from reorganizing under a different name and status purely to circumvent the decision of the MBE and Blueprint Division staff.

## **108 HEARING PROCEDURES**

**108.1** Hearings held by the Certification Appeals Board shall be conducted in accordance with the procedures set forth in this section. All hearings shall be open to the public.

**108.2** The MBE and Blueprint Division Manager shall set a date for the hearing and shall give the M/WBE at least twenty (20) days advance written notice of the date and time set for the hearing; provided, that a party may waive the right to the twenty (20) days notice period by so stating in writing. **If the right to twenty (20) notice is waived, the City shall inform the M/WBE of the hearing date and time at least seven (7) days prior to the hearing.**

**108.3** MBE's or WBE's shall have the right to be represented by counsel, present evidence and witnesses, and cross-examine adverse witnesses. If any person desires to appeal any decision with respect to any matter considered at these meetings, such person may need a record of the proceedings; for this purpose, such person may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is to be based.

**108.4** Any person may be excluded from the hearing for conduct which interferes with the hearing process.

**108.5** The rules of evidence shall not strictly apply; however, the Certification Appeals Board shall have the power to exclude irrelevant or repetitive evidence or testimony.

**108.6** The Certification Appeals Board's final decision shall be based upon the record of the hearing and must be supported by a preponderance of the evidence.

**108.7** The final decision of the Certification Appeals Board must be in writing.

## **109 REAPPLICATION SUBSEQUENT TO DENIAL OF CERTIFICATION**

**109.1** Applicants denied certification status must wait for the appropriate time to pass as

defined by Section 103.6 prior to reapplying.

**109.2** Upon expiration of the appropriate time period, said applicant shall submit to the MBE and Blueprint Division all required materials to show compliance as required under Section 102 of these rules.

(a) The applicant must provide a letter stating reapplication reasons and other documentation that also explains the applicant's M/WBE status, its present makeup, and how the applicant's makeup differs from original applications. This information is to be signed by an authorized Company official(s) and notarized.

**109.3** Based upon the MBE and Blueprint Division staff review to the Certification Appeals Board, the Certification Appeals Board shall make its decision to grant or to decline certification. Applicant shall be notified of Certification Appeals Board decision within ten (10) days of said decision.

## **110 CERTIFICATION RULES AND REGULATIONS**

**110.1** All rules, regulations and amendments thereto, promulgated by the MBE and Blueprint Division Manager will become effective upon a majority vote by the Certification Appeals Board, and approval by City Council.

**110.2** These rules may be amended at any time. It is the responsibility of Certified Minority/Women-Owned firms and prospective applicants to periodically review all Certification rules, regulations and amendments thereto.

**110.3** For purposes of these rules, the term certify may be replaced with the term "reciprocity" where appropriate.

## **111 MINORITY/WOMEN OWNED BUSINESS ENTERPRISE**

**111.1** A currently functioning business enterprise which: 1) is an independent business concern that is at least 51% owned by minority group members or at least 51% owned by women group members; 2) is independently operated and controlled by the minority or the women group members; 3) demonstrates the capability (i.e., employees, equipment, facilities, supplies, etc.) to perform a line of business; 4) provides a commercially useful business function according to customs and practices of the industry; and 5) is a for-profit business which has been in business for not less than six (6) months prior to the submittal of the application.

## **112 LEGALLY ORGANIZED**

**112.1** Company must:

(1) Hold all required state/local licenses, permits, etc., required to perform line of business in the City of Orlando.

- (2) Be legally registered by the appropriate governmental unit, depending on its organizational structure as follows:
  - (a) Corporations must be registered by the State.
  - (b) Partnerships must operate under a written Partnership Agreement that specifies contributions of partners, respective duties and authorities, distribution of profits, etc.
  - (c) Sole Proprietorships must have filed Fictitious Name Registration.
  - (d) Limited Liability firms must operate under a written Operating Agreement that specifies each owner's percentage of ownership, contributions and the rights and responsibilities of each owner.
- (3) Qualifying Agents. Companies that are required to hold any professional license or permit for performance of their line(s) of business that are obtained based on a Qualifying Agent's registration must comply with the following:
  - (a) Companies that are at least 51% minority owned must be qualified by the registration of at least one (1) of the minority owners.
  - (b) Companies that are at least 51% women owned must be qualified by the registration of at least one (1) of the women owners.
  - (c) The qualifying Agent must have an ownership interest in the company and be a full-time employee of the company.
  - (d) The company and the Qualifying Agent shall obtain and hold any licenses as required by the municipal, county or state law.

**113 MINORITY GROUP MEMBER**

**113.1** A minority group member is a citizen of the United States or alien authorized to work who is Black, Hispanic, Native American, Asian or Pacific Islanders.

- (a) Native Americans include: American Indians, Eskimos, Aleuts, and Native Hawaiians. American/Alaskan Indians must be affiliated, by membership, with a Federally Recognized Tribal Entity.
- (b) Asians/Pacific Islander include: Persons whose origin is from Japan, China, the Philippines, Viet Nam, Korea, Thailand, Indonesia, Mongolia, Brunei, Malaysia, Sri Lanka, Hong Kong, Singapore, Myanmar, Laos, Cambodia, Taiwan, India, Papua New Guinea, Samoa, Guam, U.S. Trust Territories of the Pacific, Northern Marianas, Pakistan and Bangladesh.
- (c) Hispanics include: Persons of Spanish or Portuguese culture with origins

in Mexico, Puerto Rico, Cuba, the Dominican Republic, countries of Central America (excluding Belize), or countries of South America (excluding Surinam and Guyana), regardless of race.

- (d) Blacks include: Black Persons (not of Hispanic origin) having origins in any of the Black racial groups of Africa.

## **114 OWNERSHIP**

**114.1** The business concern must be at least 51% owned by minority group members or at least 51% owned by women group members. Characteristics of ownership by the minority or the women group members include, but are not limited to:

- (a) Company documentation to reflect ownership, such as Stock Certificates, Articles of Incorporation, Minutes of Board meetings, Fictitious Name Registration, Partnership Agreements, etc.
- (b) Independent contribution of capital by the minority or the women group members commensurate with percent of ownership claimed. Ownership gifted to minority or women owners, equipment or other assets gifted, and/or funds gifted to purchase ownership or to establish a new business will not be considered independent contributions of capital. Inherited capital or assets will not be considered as gifted for purposes of these rules. Expertise will not be considered capital for the purposes of these rules.
- (c) Independent risk of loss and share of profits commensurate with the proportional ownership.
- (d) Receipt of the customary incidents of ownership, such as salary and/or intangible benefits commensurate with the ownership interest.
- (e) Financial or bonding support provided by firms, individuals or financial institutions with terms and conditions consistent with the lending industry. (Arms Length Transaction)

## **115 INDEPENDENT CONTROL**

**115.1** The minority or the women owner(s) must possess independent power to direct or cause direction of management and policies of the firm. Characteristics include, but are not limited to:

- (a) Title and authority commensurate with ownership and control.
- (b) Substantial experience in firm's line(s) of business for which minority and/or women-owned business status is requested.
- (c) Not controlled by Board of Directors or other management entities comprised of an equal or greater number of non-minority or of non-women group members.

- (d) Not controlled by any other contractual or financial relationship, which would subject minority/women owners to control by non-minority and/or non-women group members.
- (e) Possess independent authority and ability to incur liabilities for the firm and make all financial and policy decisions (commensurate with ownership).
- (f) Possess independent authority to hire/fire management personnel.

**116**

**RESPONSIBILITY FOR DAY-TO-DAY MANAGEMENT OPERATIONS**

**116.1**

The minority or the women owner(s) must be independently responsible for the day-to-day management and control of the firm's daily operations, commensurate with ownership. The following items will be considered:

- (a) Whether the license to perform the firm's line(s) of business is held by the minority or the women owner(s).
- (b) Whether substantial time is devoted to the business.
- (c) Who makes final decisions and participates in price negotiations and bidding jobs.
- (d) Who prepares and/or approves job take-offs and estimates.
- (e) Who supervises the management and field operations of the firm.
- (f) Who makes final staffing and personnel related decisions.
- (g) Who signs checks, bids, and contracts, or authorizes their signature.

**117**

**SEPARATE OPERATIONS**

**117.1**

The firm must not be affiliated or associated with another non-minority or non-women owned firm to a degree which could prevent or inhibit an independent status. Characteristics include, but are not limited to:

- (a) Shared facilities, inventory, equipment, labor force, etc., without adequate compensation.
- (b) Relationship between owners, directors, officers, or key employees or their relatives and non-minority/non-women owned firms in a similar line of business.
- (c) Substantial use by the same non-minority or non-women owned contractor.
- (d) Substantial use of the same non-minority or women-owned subcontractor.
- (e) Financial or bonding support provided by a non-minority non-women owned firms in a similar line of business, without adequate compensation.

- (f) The guarantee of loans by any person, other than the minority/women owners.

**118                    COMMERCIALLY USEFUL FUNCTIONS**

**118.1**                A company must provide a commercially useful function within the normal industry practices:

(a)                CONTRACTORS must demonstrate the independent capability to perform line(s) of business. Characteristics include, but are not limited to:

- (1)                Holds State of Florida Certification and/or local Certificates of Competency.
- (2)                Has sufficient labor force and/or the independent capability of obtaining such a force.
- (3)                Has sufficient equipment, tools, etc., and/or the independent capability of obtaining such items.

(b)                SUPPLIERS/DISTRIBUTORS: The Company must demonstrate that it is a "regular dealer" of the commodities for which M/WBE status is requested. Characteristics of a "regular dealer" include, but are not limited to:

- (1)                Owns, operates, or maintains a store, warehouse or other establishment in which commodities or goods of the general character as those identified in the M/WBE application are brought, kept in stock, and sold to the public in the usual course of business.
- (2)                Has an established or leased or assigned space in which it regularly maintains a stock of goods in which it claims to be a supplier/distributor.
- (3)                While not required that all sales be made from stock, the Company must maintain a stock of goods of the general character as those identified on the M/WBE Application, and as a regular course of business dealings, makes sales from such stock.

(c)                MANUFACTURER: The Company must demonstrate that:

- (1)                Company owns, operates, or maintains a factory or establishment that produces on the premises, the commodities identified in the M/WBE Application.
- (2)                Company has plant, equipment and personnel to manufacture on its own premises the commodities identified in the M/WBE Application.

(d)                LEASE/RENTAL COMPANY, the firm must own and maintain available

equipment to be leased/rented to the general public and/or contractors.

- (e) **TRANSPORTATION/TRUCKING COMPANIES** must be in the business of providing transportation or trucking services to the general public and/or contractors. Company must own and maintain available vehicles or trucks suitable for performing the line(s) of business and the number of trucks or vehicles must be proportionate to the firm's general volume of business. Operators must be employed by or subcontracted by the minority or women owners, on an as needed basis. Any leased owner/operator vehicles must enter into contract with the minority or the women owners in accordance with normal industry practices and must be under the control of the minority or the women owners.

**118.2** Companies whose regular method of operation is determined to be to secure contracts/subcontracts as M/WBE's and thereafter buy or contract for the commodities or services necessary to fill the contract will not be considered commercially useful and M/WBE status will be denied.

**119 WOMEN-OWNED BUSINESS STATUS**

**119.1** The following characteristic may be deemed cause to deny WBE status:

- (a) Husband and/or male principal and/or male employee:
  - (1) Is Chief Executive Officer or President.
  - (2) Provides the expertise to perform line(s) of business or has the greater experience in the industry.
  - (3) Contributes to the capitalization of the firm. Ownership gifted to women owners, equipment or other assets gifted to women owners, and/or funds gifted to purchase ownership or to establish a new business will be considered contributing to the capitalization of the firm. Inherited capital or assets will not be considered as gifted for purposes of these rules.
  - (4) Assists in obtaining credit, loans, bonding, leases, etc.
  - (5) Transferred ownership to the woman-owner for less than fair market value. (Not an arms length transaction). Ownership gifted to women owners will not be considered an arms length transaction. Inherited ownership will not be considered as gifted for purposes of these rules.
  - (6) Receives equal or greater compensation than the woman-owner, not commensurate with ownership.
  - (7) Provides expertise, occupational services or other assets to the firm for less than fair market value.

- (8) Possesses equal or greater powers to direct management and day-to-day decisions.

**119.2** When the husband or other male family members contribute to the above characteristics, the firm may be considered a family-owned firm rather than a Women-Owned Business Enterprise, as defined in Rule 111.1 and WBE status may be denied.

**120 MINORITY OWNED BUSINESS STATUS**

**120.1** The following characteristics may be deemed cause to deny MBE status:

- (a) Non-Minority Male or Non-Minority Woman.
  - (1) Is Chief Executive Officer or President.
  - (2) Provides the expertise to perform line(s) of business or has the greater experience in the industry.
  - (3) Contributes to the capitalization of the firm. Ownership gifted to minority owners, equipment or other assets gifted to minority owners and/or funds gifted to purchase ownership or to establish a new business will be considered contributing to the capitalization of the firm. Inherited capital or assets will not be considered as gifted for purposes of these rules.
  - (4) Assists in obtaining credit. Loans, bonding, leases, etc.
  - (5) Transferred ownership to the minority-owner for less than fair market value (not an arms length transaction). Ownership gifted to minority owners will not be considered an arms length transaction. Inherited ownership will not be considered as gifted for purposes of these rules.
  - (6) Receives equal or greater compensation than the minority owner, not commensurate with ownership.
  - (7) Provides expertise, occupational services or other assets to the firm for less than fair market value.
  - (8) Possesses equal or greater powers to direct management and day-to-day decisions.

**120.2** When the non-minority male or non-minority woman is a family member and contributes to the above characteristics, the firm may be considered a family owned firm rather than a Minority Owned Business Enterprise as defined in Rule 111.1 and MBE status may be denied.