

NMSDC GUIDELINES FOR CERTIFICATION AS A MINORITY-CONTROLLED BUSINESS

Certification as a Minority-Controlled Business is available through NMSDC to certain entities which have obtained certification as an MBE through an NMSDC Council and which have an opportunity to obtain equity capital through the issuance of non-voting stock.

Eligibility criteria:

1. The applicant must be currently certified as an MBE by a NMSDC Council, or have had certification revoked solely because (i) Minority Group Members no longer hold 51% of all classes of equity securities or other evidence of ownership issued by the applicant or (ii) Minority Group Members no longer constitute 51% of the board of directors (a “Pre-Certified MBE”).

2. A Pre-Certified MBE may be certified as a Minority-Controlled Business if:
 - a. Minority Group Members retain a majority (no less than 51%) of the entity’s Voting Equity;

 - b. Minority Group Members retain no less than 30% of the entity’s Economic Equity;

 - c. No more than 49% of the Economic Equity of the entity is owned by persons or entities other than:
 - (i) a Minority Group Member or
 - (ii) a Professional Institutional Investor;

 - d. Minority Group Members maintain day-to-day management or control of the operations of the entity, consistent with MBE status; and

 - e. Minority Group Members constitute a majority of the Board of directors

or

Minority Group Members appoint a majority of the board of directors.

3. The applicant will provide NMSDC with current documentation (or proposed documents, if an ownership transfer is pending) which provide

evidence that each of the criteria in 2 above is currently met or will be met upon execution of the submitted documents.

4. With respect to a pending ownership transfer, certification as a Minority-Controlled Business may be granted on the condition that the applicant submit executed documents which conform to the submitted proposed documents.
5. NMSDC will review all applications and reserves the right to deny certification to any entity which fails to meet the criteria or which fails to comply with the intent of the process, that is, to grant certification only to those entities which are controlled, legally and in fact, by Minority Group Members.

Definitions:

Economic Equity: Economic Equity refers to equity that gives the holder a residual claim on the entity's economic assets (i.e., it entitles the holder to a portion of the economic returns generated by the entity).

Minority Group Member: Minority Group Member refers to an individual who is at least ¼ or 25% minimum (documentation to support claim of 25% may be required from applicant) of the following: African American, Asian-Indian American, Asian-Pacific American, Hispanic American, Native American, as determined by NMSDC.

Professional Institutional Investor: Professional Institutional Investor refers to a firm approved by NMSDC that (a) is in the business of making equity investments (not managing businesses) and (b) manages more than \$25 million in capital.

Voting Equity: Voting Equity refers to the equity that gives the holder a vote for purposes of selecting a firm's board of directors.

THE NMSDC GROWTH INITIATIVE
Increasing growth, Expanding opportunities
FOR MINORITY BUSINESS ENTERPRISES (MBEs)

For 27 years, NMSDC has been in the forefront of minority business development, and our certification process based on 51% ownership, operation and control by minority individuals is and will continue to be the hallmark of our organization.

This new initiative provides MBEs with the potential for substantial growth and with the opportunity to access equity capital, while retaining management and control, and the advocacy of NMSDC and its member corporations. The timely provision of this important tool is crucial if MBEs are to participate on an equal footing in the expanding national and global economies.

1. To qualify for **NMSDC certification**, an MBE 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 African-American, Hispanic-American, Native American, Asian-Pacific American and Asian-Indian American. Ownership by minority individuals means the business is at least 51% owned by such individuals. Further, the management and daily operations are controlled by those minority group members. **This will not change.**
2. This proposal affects **only** those NMSDC-certified firms that have an opportunity to accept equity capital from professional institutional investors, through the creation of a new class of non-voting stock.
3. Any exceptions to the 51% ownership policy would be made on a **case-by-case** basis. MBEs approved for this special certification will be tracked separately.
4. In these cases, a minority business may be certified as a minority business enterprise (MBE) if the minority owners **own at least 30% of the economic equity*** of the firm. This occurs when non-minority investors contribute a majority of the firm's risk capital (equity). Under this special circumstance, a business may be certified as a minority firm if the following criteria are met:
 - A. Minority management/owners control the day-to-day operations of the firm.
 - B. Minority management/owners retain a majority (no less than 51%) of the firm's "voting equity".
 - C. Minority owner/s operationally control the board of directors (i.e., must appoint a majority of the board of directors).
5. In order to become certified as an MBE under the framework outlined in Section 4 above, the MBE's non-minority investor must be a **"professional institutional investor"** approved by the certifying committee. We define the term professional institutional

investor to mean a firm that (a) is in the business of making equity investments (not managing businesses), and (b) manages more than \$25 million in capital.

6. Given the complexity of the issues involved and the need for consistency in certification decisions, the National Minority Supplier Development Council (NMSDC) will employ a national, rather than regional, certification committee for these purposes. Firms will be certified by a committee at the national level, in conjunction with members of the **National Association of Investment Companies** (NAIC), an industry association for investment companies that dedicate financial resources to investing in the ethnically diverse marketplace.
7. All NMSDC-certified MBEs, **regardless of size**, are eligible for this consideration.
8. This **will not have any effect** on the requirements of other nonprofit organizations or government agencies.

*The current requirement of 51% minority control severely restrains minority firms from expanding, by limiting non-minority secured financial investments to MBEs. To address this issue, there is a distinction made between “economic equity” and “voting equity”. Economic equity refers to equity that gives the holder a residual claim on the firm’s economic assets (i.e., it entitles the holder to a portion of the economic returns generated by the firm). Voting equity refers to the equity that gives the holder a vote for purposes of selecting a firm’s board of directors.

QUESTIONS AND ANSWERS

REGARDING THE NMSDC GROWTH INITIATIVE FOR MINORITY BUSINESS ENTERPRISES (MBEs)

Equity capital is the leading tool for building global corporations. If minority businesses are to assume a role in this global economy, they also must have access to equity capital. Our initiative is designed to provide MBEs with the potential for substantial growth and the ability to access equity capital, while retaining management and control, and the advocacy of NMSDC and its member corporations.

Q1. What is the **goal** of this proposal?

A. The goal is to provide growth opportunities for minority businesses.

Q2. Is NMSDC changing its **certification** process?

I. A. *No. NMSDC-certified firms will continue to meet the 51% ownership threshold.*

To qualify for NMSDC certification, an MBE 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 African-American, Hispanic-American, Native American, Asian-Pacific American and Asian-Indian American. Ownership by minority individuals means the business is at least 51% owned by such individuals or, in the case of a publicly-owned business, at least 51% of the stock is owned by one or more such individuals. Further, the management and daily operations are controlled by those minority group members. **This will not change.**

Q3. Which MBEs will be eligible?

A. Any exceptions to the 51% ownership policy would be considered on a case-by-case basis. Such enterprises would be tracked separately. This will not affect the vast majority of our certified minority business enterprises, only those few NMSDC-certified MBEs, regardless of size, interested in and capable of attracting venture capital from professional institutional investors, not individuals.

Q4. What is meant by "**professional ins titutional investors**"?

A. A firm that (a) is in the business of making equity investments (not managing businesses) and (b) manages more than \$25 million in capital.

Q5. Who will decide which NMSDC-certified MBEs meet the criteria?

A. Given the complexity of the issues involved and the need for consistency in certification decisions, the National Minority Supplier Development Council (NMSDC) will employ a national, rather than regional, certification committee for these purposes. Firms will be certified by a committee at the national level, in conjunction with members of the **National Association of Investment Companies** (NAIC), an industry association for investment companies that dedicate financial resources to investing in the ethnically diverse marketplace.

Q6. Can't minority businesses just use **loans** and/or **minority venture capital firms**?

A. Debt financing has proven to be quite burdensome for companies that want to grow rapidly. The cash flow of the company must be able to service the fixed debt obligations. Therefore, the company's owner has historically gotten in trouble because he focuses primarily on generating the cash to service short-term debt versus implementing a long-term profitability strategy.

Regarding equity capital, minority venture capital funds manage \$1-2 billion of the \$85 billion total venture capital available. Many venture capital firms also specialize in niche markets, such as high technology firms. The current proposal affords MBEs the same investment options as any other business.

Q7. What is to keep the investor from **controlling the company**?

A. There is a distinction made between "economic equity" and "voting equity". Economic equity refers to equity that gives the holder a residual claim on the firm's economic assets (e.g., it entitles the holder to a portion of the economic returns generated by the firm). Voting equity refers to the equity that gives the holder a vote for purposes of selecting a firm's board of directors.

Under this special circumstance, a business may be certified as a minority firm if the following criteria are met:

1. Minority management/owners control the day-to-day operations of the firm.
2. Minority management/owners retain a majority (no less than 51%) of the firm's "voting equity".
3. Minority owner/s operationally control the board of directors (e.g., must appoint a majority of the board of directors).

Q8. How will **"fronts"** be prevented from taking advantage?

A. NMSDC's certification process is one of the most stringent in the country, and it will remain so. We have also asked NAIC to lend the expertise of its investment professionals to analyze this special certification category. Limiting participation to firms with professional institutional investors will serve as a deterrent against "fronts" seeking to inappropriately profit from MBE status. For the most part, professional institutional investors will be less likely to invest in businesses where the firm could later be deemed a "front" because this would put their investment at risk.

Q9. **How will smaller minority businesses be able to compete with these larger MBEs?**

A. The competition is not between MBEs and MBEs. The goal of this proposal is to enable minority suppliers to grow so they can compete with majority suppliers

Q10. **How can smaller MBEs benefit from this proposal?**

A. A certified MBE of any size can apply for this special certification. Also, economic research shows that as MBEs grow, they hire a high percentage of minority employees and contract with other MBEs, whenever possible.

Q11. What are MBEs saying about this proposal?

A. One of the most demanding challenges facing a fast-growth minority firm is its continuing need for external financing. “In fact, the overwhelming response of NMSDC-certified MBEs has been ‘This is something we have been looking forward to for a very long time,’” says Charles Lee, Jr., chairman of NMSDC’s National Minority Business Enterprise Input Committee.

Q12. What are NMSDC’s corporate members saying about this proposal?

A. With the changes in corporate purchasing, our corporate members have made repeated requests for NMSDC to devise a process that supports the growth and development of MBE suppliers to be able to compete for national and global contracts. This plan promotes the continuity and expansion of minority supplier development efforts, and NMSDC’s corporate members continue to express their commitment to doing business with minority businesses of all sizes.

Q13. Will corporations **do business** with this new category of suppliers?

A. Corporations have requested this initiative for the development of their suppliers. As always, corporate members have the option on a voluntary basis to do business with these suppliers.

Q14. How does this new type of minority certification affect those corporations that are **prime contractors to the Federal Government**?

A. These businesses cannot be counted in performance reporting to the government. This question is moot, however, since most of these businesses already exceed SBA’s “small business” size standard.

Q15. Will this have any affect on the requirements of **other non-profit organizations or government agencies**?

A. No.