

**1230.1606 OTHER RULES AFFECTING CERTIFICATION.**

A. (1) The eligibility of a business must be evaluated on the basis of present circumstances. A business must not be denied certification based solely on historical information indicating a lack of ownership or control of the business by qualifying individuals in the past if the business currently meets the ownership and control standards of parts 1230.1601 to 1230.1607.

(2) A business must not be denied certification solely on the basis that it is a newly formed business that has not completed projects or contracts at the time of its application, has not yet realized profits from activities, or has not demonstrated a potential for success. If the business meets the requirements in parts 1230.1601 to 1230.1607, the business is eligible for certification.

B. Certified socially and economically disadvantaged, economically disadvantaged area, or veteran-owned small businesses and businesses seeking certification as socially and economically disadvantaged, economically disadvantaged area, or veteran-owned small businesses shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is grounds for removal or denial of certification.

C. Except in the case of rehabilitation facilities and extended employment providers, only businesses organized for profit may be eligible.

D. An eligible socially and economically disadvantaged or veteran-owned small business must be owned by individuals who are socially and economically disadvantaged or by veterans, respectively. Except as provided in this item, a business that is not owned by such individuals, but instead is owned by another business, including a socially and economically disadvantaged or veteran-owned small business, is not an eligible socially and economically disadvantaged or veteran-owned small business.

(1) If qualifying individuals own and control a business through a parent or holding company, established for tax, capitalization, or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the subsidiary may be certified if it otherwise meets all the requirements in parts 1230.1601 to 1230.1607. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) A subsidiary may be certified only if there is cumulatively 51 percent ownership of the subsidiary by qualifying individuals. For example:

(a) if qualifying individuals own 100 percent of a holding company, which has a wholly owned subsidiary, the subsidiary may be certified if it meets all other requirements;

(b) if qualifying individuals own 100 percent of a holding company that owns 51 percent of a subsidiary, the subsidiary may be certified if all other requirements are met;

(c) if qualifying individuals own 80 percent of a holding company that owns 70 percent of a subsidiary, so that the cumulative ownership of the subsidiary by qualifying individuals is 56 percent (80 percent of the 70 percent), which is more than 51 percent, then the subsidiary may be certified if all other requirements are met;

(d) if unit (b) or (c) applies, but someone other than the qualifying owners of the parent or holding company controls the subsidiary, even though the subsidiary is owned by qualifying individuals through the holding or parent company, it cannot be certified because it fails to meet control requirements;

(e) if qualifying individuals own 60 percent of the holding company, that in turn owns 51 percent of a subsidiary, so that the cumulative ownership of the subsidiary by qualifying individuals is about 31 percent, which is less than 51 percent, then the subsidiary cannot be certified; or

(f) if the holding company, in addition to the subsidiary seeking certification, owns several other companies and the combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification, then under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

E. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a business is an independent business, owned and controlled by qualifying individuals.

F. Socially and economically disadvantaged, economically disadvantaged area, or veteran-owned small businesses may not be required to be prequalified as a condition for certification.

G. A business that is owned by an Indian tribe rather than by Native Americans as individuals may be eligible for certification. Such a business must be controlled by qualifying individuals, as provided in parts 1230.1601 to 1230.1607.

**Statutory Authority:** *MS s 16C.19*

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