

operations. The business may not be subject to any formal or informal restrictions, through bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the minority owners, without the cooperation or vote of any owner who is not a minority, from making a business decision of the business.

(iv) If the owners of the business who are not minorities are disproportionately responsible for the operation of the firm, the firm is not controlled by minorities and may not be considered a minority business enterprise within the meaning of this section. Where the actual management of the business is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers may, for the purposes of this section, be considered as controlling the business.

(v) All securities which constitute ownership or control of a corporation for purposes of establishing it as a minority business enterprise under this section shall be held directly by minorities. No securities held in trust, or by any guardian for a minor, shall be considered as held by minorities in determining the ownership or control of a corporation.

(vi) The contributions of capital or expertise by the minority owners to acquire their interests in the business shall be real and substantial. Insufficient contributions include a promise to contribute capital, a note payable to the business or its owners who are not socially and economically disadvantaged, or the mere participation as an employee, rather than as a manager.

(vii) The certifying agency shall give special consideration to the following additional circumstances in determining eligibility:

1. Newly formed businesses and businesses whose ownership or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the businesses;

2. A previous or continuing employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities discussed in this section; and

3. Any relationship between a minority business enterprise and a business which is not a minority business enterprise which has an interest in the minority business enterprise is carefully reviewed to determine if the interest of the nonminority business conflicts with the ownership and control requirements of this section.

(5) (i) The WSSC may conduct any impartial fact-finding study in connection with a minority business enterprise program for consistency with applicable law.