

(ii) An eligible minority business enterprise shall be an independent business. The ownership and control by minorities shall be real, substantial, and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. The minority owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests as demonstrated by an examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a minority business enterprise. In determining whether a potential minority business enterprise is an independent business, the certifying agency shall consider all relevant factors, including the date the business was established, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing, and other relationships with nonminority businesses vary from industry practice.

(iii) The minority owners shall also possess the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy, and 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: