

Frequently Asked Questions: Disadvantaged Business Enterprise Program

DISCLAIMER: These questions and answers provide guidance and information in conjunction with the provisions under 49 CFR part 26, pertaining to the implementation of the Arizona Department of Transportation (the Department's) Disadvantaged Business Enterprise (DBE) program. These questions and answers are not, in themselves, legally binding or mandatory, and do not constitute regulations. While these questions and answers are not mandatory, they are derived from extensive DOT, recipient, and contractor experience and input concerning the determination of compliance with Part 26.

1. What is a Disadvantaged Business Enterprise (DBE)?

A disadvantaged business enterprise or DBE is a for-profit small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged- - In the case of a corporation, 51 percent of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. What is the Arizona Unified Certification Program?

The Arizona Unified Certification Program (AZUCP) was developed under a mutual agreement between certifying agencies, creating "one-stop shopping" for Disadvantaged Business Enterprise (DBE) certification in Arizona. The Arizona Department of Transportation (ADOT Civil Rights Office certifies eligible firms throughout the state, along with other certification agencies.

3. What are the DBE program objectives?

To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs; to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts; to ensure that the Department's DBE program is narrowly tailored in accordance with applicable law; to ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs; to help remove barriers to the participation of DBEs in DOT-assisted contracts; to assist the development of firms that can compete successfully in the marketplace outside the DBE program; and to provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

4. What are the criteria for DBE certification?

Eligibility requirements for certification as a DBE are stated in 49 CFR, Part 26. The following six requirements must be proved by a DBE applicant but does not cover all the requirements found in 49 CFR, Part 26.

Social and Economic Disadvantage: A disadvantaged owner must be a U.S. Citizen (or resident alien) and meet the federal definition of socially and economically disadvantaged as defined in 49 CFR Part 26.67. Presumptive groups include women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian-Americans, or other minorities found to be disadvantaged by the regulations or any individual found to be socially and economically disadvantaged on a case-by-case basis.

Personal Net Worth: Only disadvantaged persons having a personal net worth (PNW) of less than \$1.32 million can be considered as a potential qualified DBE. Items excluded from a person's net worth calculation include an individual's ownership interest in the applicant firm, and his or her primary residence.

Business Size Standard: A firm (including affiliates) must be a small business as defined by the Small Business Administration (SBA). It must not have annual gross receipts over \$22.41 million in the previous three fiscal years (\$52,470,000 for airport concessions in general with some exceptions). Depending on the type of work the business performs, other size standards may apply.

Ownership: Must be a for-profit small business concern where socially and economically disadvantaged individuals own at least 51% interest and control management AND daily business operations.

Independence: The business must not be affiliated to another firm in such a way as to compromise its independence and control. These include, but not limited to, such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

Management and Control: The socially and economically DBE owner (s) must possess the power to direct or cause the direction to the management and policies of the firm and to make day-to-day decisions, as well as long-term decisions on matters of management, policy and operations.

5. How can I prove my group membership?

Any of the following documentation which indicates group membership will be considered: Your Birth Certificate, your Parent's or Grandparent's Birth Certificate, Naturalization Papers, Passport, Military Discharge Paper (D.D. 214), Tribal Role Card or Registration with the United Indian Development Association

and any other documentation that provides evidence of group membership. However, if you do not have any of the preceding documentation as evidence of group membership, you will have to submit one (1) notarized statement from a relevant community organization attesting that you are regarded as a member of the group and stating how long you have been regarded as a member of that particular group. Group membership cannot be claimed solely upon being born in a certain country; and personal photographs are not acceptable as evidence of group membership. Any documents presented as evidence of group membership, in a language other than English, must be translated and notarized.

6. If I do not fall within the presumptive groups can I still be considered a DBE?

Yes, but you must prove by providing documentary evidence that you are socially and economically disadvantaged. Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who meets the criteria based on 49 CFR Part 26, and any individual who the Department finds to be socially and economically disadvantaged on a case-by-case basis. Typically, individuals in the following groups are rebuttably presumed to be socially and economically disadvantaged, however those outside of these are assessed on a case-by-case basis: Black Americans, which includes persons having origins in any of the Black racial groups of Africa; Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race; Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong; Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; and Women.

7. What is the threshold for personal net worth?

The threshold for each owner(s) shall be no greater than \$1.32 million. Only disadvantaged persons having a personal net worth (PNW) of less than \$1.32 million can be considered as a potential qualified DBE. Items excluded from a person's net worth calculation include an individual's ownership interest in the applicant firm, and his or her primary residence

8. Which business owner should fill out the Personal Financial Statement (PFS)?

The majority disadvantaged owner(s) whose ownership and control is/are being relied upon for DBE certification should complete a PFS. Usually this is the person who owns 51% or more of the firm. If two disadvantaged owners make up a majority of 51% ownership, both will be required to complete the PFS. For example, if Owner A owns 33%, Owner B owns 33% and Owner C owns 34% the two disadvantaged owners whose ownership and control is being relied up must complete the PFS.

9. When filling out the PFS, should I include my primary residence even though it is excluded from the net worth calculations?

Yes, you must indicate the current market value of your primary residence on the PFS form together with any debt you owe against it. The equity in your primary residence does not count toward the allowed \$750,000, however the adjustment will be made by your certification analyst.

10. Why is it required to have an on-site evaluation of my business?

It is a regulatory requirement. The Federal regulations states in 49 CFR Part 26.83 subpart C, section 1: "Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification."

11. If my business is DBE certified, how long is the certification good for?

Three years. You are however required to update your file annually. This is called the annual update affidavit. The affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership or control requirements. This update requires you to submit the most recent business and personal taxes. On the third year, your firm will go through a re-certification process.

12. What is the determination on the eligibility of firms owned by an Indian tribe?

Any Indian Tribe may own a DBE firm as an entity, however the firm MUST be controlled by socially and economically disadvantaged individuals. The control requirement is the disadvantaged individuals involved with controlling the firm must meet personal net worth standards. Not every Indian Tribe member must meet this requirement, but only the disadvantaged officers, board members, CEO, etc. who actually control the firm must do so. The issue of control is defined in 49 CFR Part 26.71. The firm must also comply with the regulations regarding size standards, ownership, and independence.

13. I'm an out-of-state business and currently seeking work in Arizona, can I be certified as a DBE?

Yes, however your firm must first be certified in your home state. You must fill out the appropriate application in the state you reside. For example, if your firm is based in New Mexico, you must proceed through New Mexico's DBE certification process before seeking DBE certification in Arizona. Once you are certified as a DBE in your home state, you can then apply for certification in Arizona.

14. Is there a cost to the applicant for the certification process?

No. The only cost associated with certification is for notarizing the application, and the cost of postage.

15. I have questions regarding the DBE application; who can I contact for assistance?

There are detailed instructions attached to the application packet on how to complete the forms, however if you still have additional questions our certification analysts are here to assist you with your AZUCP DBE application.

Monday – Friday, 8 a.m. – 4 p.m. (602) 712-7761

Krystal Smith- DBE Certification Analyst
ksmith@azdot.gov

Jamie Geist- DBE Certification Program Manager
jgeist2@azdot.gov

16. What are my appeal rights if I am denied DBE certification?

You may appeal a decision if you feel all the facts have not been duly considered. To do so, please respond in writing within 90 days from the date of your denial letter to:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Policy and Program Development Division (S-33)
1200 New Jersey Avenue, SE W-35
Washington, D.C. 20590
Phone: 202-366-4070

Your letter to the U.S. Department of Transportation must contain the following: information and arguments concerning why the Arizona Department of Transportation's decision should be reversed and the name and address of any other U.S. DOT recipient/agency which currently certified the firm, which has rejected an application for certification from the firm or removed the firms' eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending.

17. How long is the certification process from start to finish?

Due to the major influx of new applications, we must work each application in the order received. To better understand the process, only when all requested documentation has been received the certification analyst can make an eligibility recommendation to the Certification Manager. The process also requires an onsite visit to the business premises to assess managerial and operational aspects of the firm.

18. Does DBE certification have reciprocity with other agencies such as the Small Business Administration (SBA)?

Currently, AZUCP does not have any reciprocity with the SBA. The SBA 8(a) Program and the DBE Program are separate Federal certifications. Currently, one must apply with both SBA and ADOT to attain both certifications.

19. I'm a prime contractor, how can I find DBE firms?

All certified firms are listed in the DBE Directory- www.azdbe.org You can access the database to find DBE firms in your area. If you are experiencing

problems with accessing our database you may call our office at: (602) 712-7761.

20. My business is certified as a DBE, where do I go from here?

As you know, many state departments, cities, and counties offer many opportunities for small businesses to bid for federally funded contracts. For jobs currently out for bid, please visit the Arizona Department of Transportation's Contract and Specifications website to view all upcoming projects for bid:

<http://www.azdot.gov/Highways/CNS/index.asp>