

Frequently Asked Questions: Disadvantaged Business Enterprise Program

DISCLAIMER: These questions and answers, in conjunction with the provisions under 49 CFR, Part 26, provide guidance and information pertaining to the implementation of the California Department of Transportation (Caltrans) Disadvantaged Business Enterprise (DBE) Program. These questions and answers are not, in themselves, legally binding and do not supplement the regulations. They are issued to provide an acceptable means, but not the only means, of clarifying compliance requirements with Part 26. While these questions and answers do not supplement the regulations, they are derived from extensive U.S. Department of Transportation (U.S. DOT), recipient, and contractor input concerning the determination of compliance with Part 26.

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

A DBE is a for-profit small business concern that is at least 51 percent owned by one or more individual(s) who are both socially and economically disadvantaged. For example, in the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. Also, the management and daily business operations of a DBE business must be controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. What is the California Unified Certification Program (CUCP)?

The CUCP was developed under a mutual agreement between certifying agencies within the State of California, creating a “one-stop shopping” for DBE certification in California. While Caltrans’ Certification Branch certifies eligible firms throughout the State, there are other agencies which provide DBE certification in their geographic area. These include City of Los Angeles, Los Angeles Metropolitan Transportation Authority, Bay Area Rapid Transit (BART), and the City of Fresno, to name a few. A full list is available on the certification website at: http://www.dot.ca.gov/hq/bep/documents/Roster_of_Certifying_Agencies.pdf.

3. What are the DBE Program objectives?

The DBE Program objectives are:

- **To ensure nondiscrimination in the award and administration of federally-funded contracts in Caltrans highway, transit, and airport financial assistance programs.**
- **To create a level-playing field on which DBEs can compete fairly for federally-funded contracts.**
- **To ensure the 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 federally-funded contracts; to assist the development of firms that can compete successfully in the marketplace outside the DBE Program.
- To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
- 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, Subpart D-Certification Standards. 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.

Rules to determine social and economic disadvantage also include extending the treatment of assets held by married couples to include domestic partnerships and civil unions that are legally recognized under state law. It also codifies guidance regarding the treatment of assets transferred to an immediate family member, or to a trust a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to the submission of an application for certification or within two years of a participant's annual program review.

Personal Net Worth: Only disadvantaged persons having a personal net worth (PNW) of less than \$1,320,000 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's firm, and his or her equity in their primary residence. Also, if an individual demonstrates that he/she is able to accumulate substantial wealth, the individual's claim of economic disadvantage may be denied, even though the individual's PNW is less than \$1.32 million.

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 \$23,980,000 in the previous three fiscal years (\$56,420,000 for airport concessions in general with some exceptions). Depending on the type of work the business performs, other lower size standards may apply

Ownership: Must be a for-profit small business where socially and economically disadvantaged individuals own at least 51 percent interest and control management AND daily business operations; ownership cannot be in name only.

Independence: The business must not be affiliated with another firm in such a way as to compromise its independence and control. These include, but are not limited to, such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. This means a business should be operational on its own, without support beyond what is applicable under normal industry standards.

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. Any delegation of duties must be revocable and where state law requires the owner to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. A mere change in business structure to meet DBE requirements may not be sufficient to prove management and control.

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 proceeding 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 as stated in 49 CFR, Part 26, Appendix E. Socially and economically disadvantaged individual means any individual who is a U.S. citizen (or lawfully admitted permanent resident) and who meets the criteria based on 49 CFR, Part 26, and any individual found to be socially and economically disadvantaged on a case-by-case basis. In every case, consideration is given to education, employment and business history to prove disadvantage in entering into or advancing in the business world.

7. Which business owner should complete 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 percent or more of the firm. If two disadvantaged owners make up a majority of 51 percent ownership, both will be required to complete the PFS. For example, if Owner A owns 33

percent, Owner B owns 33 percent, and Owner C owns 34 percent, the two disadvantaged owners whose ownership and control is being relied upon must complete the PFS.

8. When completing 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 Page 2 of the PFS form together with any debt you owe against it. However, do not include the present market value or mortgage amount of your primary residence on summary Page 1 of the PFS.

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

It is a regulatory requirement. The Federal regulations state in 49, CFR, Part 26.83, Subpart C, Section 1:

“... you must perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their resumes 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.”

10. Once my business is DBE certified, does the certification expire?

No. DBE certification does not expire. Once your business is certified as a DBE, it shall remain certified until and unless your certification is, in whole or in part, removed a due process. You are required to update your records with your certifying authority annually by completing an Annual Update Affidavit (AUA), and also during a 5th Year AUA process. The affidavit must affirm there have been no changes in the firm’s circumstances affecting its ability to meet size standards, disadvantaged status, and ownership or control requirements. This update requires you to submit the most recent business and personal taxes (signed copy). During the 5th Year AUA review, we may ask you to update your Personal Financial Statement as well. Failure to comply with the AUA requirement will lead to a firm being suspended, with further action taken to remove the business from the program.

11. 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.

12. I'm an out-of-state business and currently seeking work in California; can I be certified as a DBE?

Yes, however, your firm must first be DBE certified in your home state. You must complete the appropriate application in the state you reside. For example, if your firm is based in Arizona, you must proceed through Arizona's DBE certification process before seeking work as a DBE in California. Once you are certified as a DBE in your home state, you can then apply for certification in California and a California certifying agency can request the onsite report from Arizona's DBE agency. The certification process is complete under the provision of 49 CFR, Part 26.85, Interstate certification. Out-of-state businesses must submit a complete package of all the documents submitted to their home state to date.

13. 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.

14. I have questions regarding the DBE application; who can I contract 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 friendly certification analysts are here to assist you with your Caltrans DBE application. Just call and ask for the Analyst of the Day, Monday through Friday, 8:00 a.m. to 5:00 p.m., PST, at (916) 324-1700. (If you do not have a DBE application, you may obtain the application at http://www.dot.ca.gov/hq/bep/business_forms.htm.)

15. 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. Departmental Office of Civil Rights
External Civil Rights Program Division, Room W78-101
1200 New Jersey Avenue, SE
Washington, D.C. 20590**

You must include in your letter of appeal a statement that specifies why the certification decision is erroneous, identifies the significant facts that were not considered by the certifying agency, or identifies the regulatory provision that was improperly implied.

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

Certifying agencies must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required. A certifying agency may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.

17. Can I use the DBE application form to apply for airport concession as well?

Yes. If you do not have a DBE application, you may obtain the application at http://www.dot.ca.gov/hq/bep/business_forms.htm.

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

No. Caltrans does not have any reciprocity with the SBA. The SBA 8(a) Program and the DBE Program are separate Federal certifications. One must apply with both SBA and Caltrans to attain both certifications.

19. Are my taxes and other personal information secured?

At Caltrans, we must comply with confidentiality requirements and we take this responsibility seriously. All files are kept behind locked doors, where only Certification staff has access.

20. I'm a prime contractor; how can I find DBE firms?

All certified firms are listed in the DBE Directory. You can access the database to find DBE firms in your area at http://www.dot.ca.gov/hq/bep/find_certified.htm. If you are experiencing problems with accessing our database, you may call the Analyst of the Day at (916) 324-1700.

21. My business is certified as a DBE; where do I go from here?

As you know, other 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 Division of Contracts and Procurements website. For major projects, visit the Office Engineer website. If you're looking to bid with agencies other than Caltrans, you can find links to participating California Unified Certification Program agencies at <http://californiaucp.org>. Being a small business in California offers many opportunities; not just with federal contracts, but state contracts as well. You may want to visit: Department of General Services website. You may also contact Caltrans' District Small Business Liaison staff at: http://onramp.dot.ca.gov/dist11/admin/b_m_home/business_m_small_b.htm.

22. Can my DBE certification be suspended?

Yes. Regulatory changes effective November 3, 2014, (49 CFR, Part 26) provides authority to the certifying agencies, including Caltrans, to suspend a firm's DBE certification without a hearing when a certifying agency believes that one or more of the disadvantaged owners needed to meet the ownership and control requirements is incarcerated or died.

A certifying agency has authority to suspend a firm's DBE certification when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified; when the DBE fails to notify the

recipient in writing of any material change in circumstances; or fails to timely file an affidavit of no change and supporting docs such as taxes.

23. What are effects of being suspended?

While suspended, a DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

24. How do I get my suspension issue resolved?

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under §26.87 of this part. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.

25. Can I appeal the suspension?

The decision to immediately suspend a DBE is not appealable to the US Department of Transportation.