

**U.S. DEPARTMENT OF
TRANSPORTATION
Departmental Office of Civil Rights**

**DBE Certification Appeals
Program**

**A Guide to Certification Appeals to
the Department of
Transportation**



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Development Division*

DBE Certification Appeals Program

The Director of Civil Rights has delegated responsibility to the External Policy & Program Development Division (EP&PDD) to adjudicate appeals and other disputes relating to denials of DBE Certification by a transportation recipient. This Division must render a decision within 180 days upon receipt of records 49 CFR § 26.89(f)(8).

The External Policy & Program Development Division – through the DBE Certification Appeals Program – also conducts a number of other activities in support of this program. The staff provides training to State and local agencies on certification procedures and conducts outreach efforts to the community to inform individuals and businesses of their rights under the Department’s Regulations, 49 CFR Parts 23 and 26.

The Department receives between 200 and 300 new appeals annually. The staff presently requires about 60 hours to adjudicate a case after receipt of the complete file. During the past 11 years, the EP&PDD adjudicated over 2000 certification appeals and third-party complaints.

In Fiscal Year 1995, the EP&PDD closed 322 appeals, which eliminated the backlog created by unusual circumstances in FY-94. Closures for Fiscal Year 1996-98 averages 213 appeals.

The staff also participates with the Office of Small and Disadvantaged Business Utilization staff in its market place outreach program. If you need information on future visits and presentations, please call (202) 366-4754.

Certification is the Key to participating in the DBE Program.

For general information about the DBE program, please contact the following offices (Area Code 202):

Federal Highway Administration.....366-0693
Federal Transit Administration.....366-4018
Federal Aviation Administration.....267-3270

or

The Office of Small and Disadvantaged
Business Utilization.....366-1930

Web address: osdbuweb.dot.gov

DBE Certification Program – *The Appeal Process*

- **Major Considerations**
 - Certification Eligibility
 - Standard Industrial Classification (SIC) Code Limitations
 - Affiliates
 - Franchises
 - Concessionaires
 - DOT/SBA Limitations
 - Joint Ventures

- **Other Major Considerations**
 - Local Procedures
 - Right to Appeal
 - Acceptance of Appeal

- Investigative File
- DOT Review
- DOT Decision
- Judicial Review

- **To appeal to the Department**

Firms should submit denials of DBE certification appeals to the US Department of Transportation (DOT) within 90 days from the date of denial by a DOT recipient. All Appeals should be submitted to:

Departmental Office of Civil Rights
External Policy & Program Development Division
400 7th Street SW – Room 5414
Washington, DC 20590

For more information about this program contact the External Policy & Program Development Division at (202) 366-4754

Web address: www.dot.gov/ost/docr or
E-Mail: EPPD@ost.dot.gov

WHO IS AN ELIGIBLE DBE?

An eligible DBE firm is one that is at least 51% owned and controlled by one or more socially and economically disadvantaged individuals. Also, the firm must be controlled and managed on a daily basis by the disadvantaged owner(s).

A firm must also be a small business concern as defined by the Small Business Administration's (SBA) Regulation at 13 CFR Part 121 and Department's Regulations at 49 CFR Part 26, which provides for a cap of \$17.42 million annual average gross receipts over a three year period for general construction firms.

Size standards for concessionaires doing business at airports differ from size standards of DBEs engaged in highway and transit related construction activities. FAA Regulations are pending at this time.

A joint venture can be certified as a DBE if the DBE partner meets the above criteria, shares in ownership, control, management, risks, and profits of the joint venture,

and is responsible for a clearly defined portion of the work performed.

DBE eligibility criteria for DOT-assisted projects are uniformly applied by the Federal Highway Administration, Federal Transit Administration, and the Federal Aviation Administration. States and other local organizations and agencies may conduct their own certification or may rely on another recipient's certification. Many recipients rely on State DOT certifications. As presently structured, the recipient is always responsible for the certification of a Disadvantage Business Enterprise firm.

Eligibility Standards Required by 49 CFR Parts 23 and 26

Major considerations:

Business size – *Periodically adjusted for inflation*

Ownership – *51% owned by socially and economically disadvantaged individual*

Control – *Must be real and substantial*

Independence – *No external controls*

Presumptive Group Membership – *Bonafide Group Membership*

Social and Economic Disadvantage – *Non presumptive group members must establish disadvantage on an individual basis. Also a personal net worth (PNW) of less than \$750,000 is required for every potential DBE to qualify (This does not apply to FAA concessionaires)*

Site Visits – *Mandated by Statute, reciprocity*

Note: Eligibility criteria for concessionaires doing business at airports differ in size standards from DBEs engaged in highway, transit, or airport-related construction projects

References

49 CFR Parts 23 and 26

13 CFR Part 121