

Mandatory DBE Certification Training



Federal Aviation
Administration

Office Of Civil Rights

ACHIEVING SAFETY
THROUGH DIVERSITY

**Third Annual FAA National Civil Rights
Training Conference for Airports
Alexandria, Virginia
August 28 – 30, 2012**

FAA Reauthorization

- By Feb. 15, 2013, establish a mandatory DBE certification training program to those:
 - who provide assurances to meet DBE goals, or
 - who are responsible for certifying DBEs
- FAA/FHWA/FTA recipients in each state are members of Unified Certification Programs (UCP) that conduct DBE certifications; these certifications are effective state-wide

Planning

- **Program Development**
 - Conduct Internal Meetings, Ensure Operating Authority Coordination, Identify and Secure Resources, Obtain Stakeholder Input, Finalize Program Development, Market the Program
- **Training Development**
 - Create Content Outline, Identify and Develop Modules, Create Detailed Lessons, Secure Training Web Portal, Obtain Stakeholder Input, Promote and Market to UCPs
- **Training Delivery**
 - Develop User-Friendly Tracking Mechanism, Ensure Webinar and In-person Availability, Promote and Market to UCPs

Syllabus

- Module 1 – Program Basics
- Module 2 – Certification Basics
- Module 3 – Small Business Requirement
- Module 4 – Ownership and Contribution Issues in Detail
- Module 5 – Appendix E
- Module 6 – Economic Disadvantage and PNW
- Module 7 – Firm Evaluation Procedures
- Module 8 – DBE Fraud Detection and Prevention
- Module 9 – Airport Concession DBE

Module 1: Program Basics

- DBE Program History: What Congress and USDOT intended
- Examples of barriers that firms experience
- How the Program works: State Recipients implement goal-setting, certify firms in work codes, ensure good faith efforts by primes, count participation, and monitor
- Where to find the Regulations, preambles, guidance documents, SBA regulations, and NAICS
- How USDOT issues rules: ANPRM, NPRM, and Final Rule
- DBE Program Contacts
- Forms, Websites, and Acronyms

Module 2: Certification Basics

- Definition of a DBE: for profit in home state, small, PNW cap, independently owned and controlled, social and economic disadvantage requirement
- Applicant bears the burden of proof
- Application process
- Duty to cooperate
- Social Disadvantage and the Presumptive Groups
- Ownership and contribution
- Control
- Types of Businesses: Sole Proprietorship, Corporation (LLC, et al.), Partnership, Joint Venture, etc.

Module 3: Small Business Requirement

- Two requirements to being a DBE: SBA/NAICS size standard **and** USDOT DBE size standard
- Personal Net Worth limit
- Affiliation and why it is important
- Examples of applying the rule to gross receipts
- How to calculate gross receipts (total income + cost of goods sold)
- Case study – using the tax return and applying SBA standards

Module 4: Ownership and Contribution Issues in Detail

- Applicant bears the burden of proof (§26.62)
- Assets used to purchase or acquire the business
- Marital assets and community property
- Contribution vs. formation/independence
- “Clear and convincing burden” requirement
- Trusts
- Case studies

Module 5: Appendix E

- Social Disadvantage and group membership
- Flexibility in requiring proof/documentation of membership
- Persons with disabilities and veterans
- Case-by-case determinations for persons not presumptively disadvantaged
- Proving social and economic disadvantage under Appendix E
- Case studies
 - The “9/11” claim
 - Cultural difficulties in other countries (not acceptable)
 - Regional stereotypes
 - Union membership (Best Wood Judge case)

Module 6: Economic Disadvantage and PNW

- Weaknesses and importance of correctly assessing all applicants' net worth
 - Cross-check values with outside sources
 - Don't rely solely on owners' information
 - Tax returns don't tell the whole story; "signed," not "draft"
- Burden of proof and burden of production
- Defining assets and liabilities
- What to do when an applicants shows ability to accumulate substantial wealth
- Collecting info from non-applicant spouses
- Excluding personal residence and including personal property

Module 6: Economic Disadvantage and PNW cont'd.

- Importance of obtaining current asset values and current bank statements
- Inclusion of outside business interests
- Real estate holdings
- Buildings used by business but held in owner's name
- Foreclosed properties
- Stock valuation issues
- Commingling: loans between applicant firm and the owner
- Unpaid taxes: generally not a liability
- Tax liens

Module 6: Economic Disadvantage and PNW cont'd.

- Retirement assets: required by regulation
 - Evaluating withdrawal penalties
 - Inclusion of annuities (withdrawal vs. cash value)
- Counting trusts as assets
- Commercial property valuation
- IRS publications and where to find them
- Letters of credit
- Transfers between spouses within 2 years

Module 7: Firm Evaluation Procedures

- On-site review tips
 - Interview owners and employees
 - Request documents on site
 - Applicant's duty to cooperate
- UCP requirement and interstate certification rules
- How long does a certification last?
- Certification denials: writing an effective decision
 - When is the certification process complete?
 - Specific evidence references
 - Address all issues! (Best Wood Judge case)
 - Correctly identify the right burden of proof standard!

Module 7: Firm Evaluation

Procedures cont'd.

- Denials based on CUF: generally not acceptable
- Appeal process at the state level
- Waiting period for reapplying
- Appeals to USDOT
- Entering information into DOCR database
- Recordkeeping and confidentiality
- Decertification triggers
- Due process requirements
- Third-party challenges
- Enforcement matters

Module 8: DBE Fraud Detection and Prevention

- Highlights of applicable regulations
- Reasons for increase in fraud
- Enforcement statistics
- Defining fraud
- Recent cases
- Methods of detecting and preventing fraud
- Red flags in the field
- Actions to take when fraud is suspected
- Debarment vs. suspension

Module 9: ACDBE

- Distinctly unique definition of an ACDBE
- Ownership and control are key factors
- Different size standards than DBE
- ACDBEs frequently exceed size standards
- Contribution issues
- Discontinuation of “Third Exclusion”
- Cautionary items, including letters of credit
- Independence concerns: property issues and assets
- Political pressure

Questions?

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