

DBE/ACDBE Certification- What To Look For



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*ACHIEVING SAFETY
THROUGH DIVERSITY*



Topics

- Definition of a DBE/ACDBE
- Purpose of certification
- Review elements
- Processing time
- Annual update
- Denial Letters

Definitions

Disadvantaged business enterprise or *DBE* means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Definitions

- *Airport Concession Disadvantaged Business Enterprise (ACDBE)* means a concession that is a for-profit small business concern—
 - (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
 - (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Purpose of Certification

The purpose of certification is to ensure that only firms that fully meet the eligibility requirements of the regulation are permitted to participate as DBEs/ACDBEs.

What Does a Complete Certification Application Look Like?

- Complete Uniform Application, including Personal Financial Statement and Affidavit
- Supporting documents

Application

Review elements

- Firm must be a small business
- Firm must be **51%** owned by:
 - Socially disadvantaged individual
 - Who is also economically disadvantaged
- Firm must be managed and controlled by a socially and economically disadvantaged owner

Certification Application Review - Quick Review

- Firm is a for-profit small business
 - Quick review of gross receipts
- 51% owned by socially and economically disadvantaged individuals
 - Check for membership in one of the groups
 - Check basic ownership requirements are met
 - 51%
 - Quick review of personal net worth statement

Certification Application Review - Quick Review

- Managed by one or more of the socially and economically disadvantaged owners
- Controlled by one or more of the socially and economically disadvantaged owners

Business Size and Affiliation

- Review application and supporting documentation to determine if firm meets size standards
 - Gross receipts - from business tax returns (check NAICS)
 - Determine if there are affiliates – personal tax returns

[Business Tax Return Example](#)

[Personal Tax Return Example](#)

Economic Disadvantage

- Review personal net worth statement
 - Reviewing the statement
 - Rebutting the presumption of economic disadvantage
 - Accumulation of substantial wealth
 - Considerations
 - Assets with a value in excess of \$6 million
 - AGI over \$350,000 for 3 years
 - Earnings offset by losses
 - Reinvestment in firm

Ownership

- 51% of each type of stock, class of partnership or member interest, depending on structure
- Disadvantaged owners must enjoy the customary incidents of ownership and share in the risks and profits commensurate with their ownership
- Capital contributions to acquire ownership
 - Real, Substantial and Continuing
 - Loans – what kind of loans are okay?
 - Expertise
 - Gift or transfer from non-disadvantaged individuals
 - Marital assets
- Ownership must be by an individual, except:
 - Trust ownership in certain situations
 - Holding company ownership in certain situations
 - Indian tribe, Native Hawaiian Organizations or Alaska Native Corporations

[Loan Sample](#)

Control

- Independence
- Restrictions on control
- Power to direct and manage
 - Highest officer position
 - Control of the board
 - General partner with control
- Managerial and technical competence and experience directly related to the type of business
- State or local laws regarding licenses
- Differences in remuneration
- Outside employment
- Family owned businesses
- Equipment ownership
- Transfer of ownership from a non-disadvantaged individual to a disadvantaged individual

[Sample Operating Agreement](#)
[Sample Resumes](#)

Independence

- Shared facilities, personnel, equipment, etc.
- Exclusive relationships
- Financing
- Employer/employee relationships
- Family relationships
- Consistency with normal industry practices

NAICS Codes

- Certification is only for specific work that the disadvantaged owner has the ability to control
- Most specific code available should be used
- Clear, specific, and detailed narrative may be added

California UCP Directory Sample

Other Considerations

- Pattern of conduct indicating involvement in attempts to evade or subvert the intent or requirements of the regulation
- Commercially useful function issues cannot be considered
- Evaluate based on present circumstances
- Requiring prequalification is prohibited
- Application must be notarized
- Check DOCR for denials/decertifications

On-Site Review

- An on-site visit is **REQUIRED**
- Owners, officers must be interviewed
 - Principal place of business
 - Job sites
- Documentation of the on-site is necessary

[Sample On-Site 1](#)

[Sample On-Site 2](#)

Timing for Application Processing

- Documents should be date stamped
- Any required additional information must be requested within 30 days of receipt of the application
- Decisions on applications for certification must be made within 90 days of receipt of all information
- Time may be extended once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension

Annual Updates

- No change affidavit
- May request tax returns
- May not routinely request personal financial statements

Common Misconceptions

- ACDBE applicants have to be engaged in operating an airport concession when they apply in order to be certified as an ACDBE (FALSE – applicants must only demonstrate that they own and have the ability to control such a business)
- The equity in an individual's primary residence and the value of DBE or ACDBE businesses may be deducted from the individual's personal net worth (FALSE – Only the applicant business is deducted)
- If a firm is 100% owned by a disadvantaged individual, you can assume the firm meets the requirements (FALSE)

Common Misconceptions

- It's not necessary to carefully review the personal net worth statement if the applicant falls well below the cap (FALSE)
- As long as the firm has experience in a certain type of work, the firm should receive the NAICS code (FALSE – the disadvantaged owner must control)
- A 51% disadvantaged owner must control the firm (FALSE – One of the disadvantaged owners must control the firm)
- A disadvantaged owner cannot have outside employment (FALSE – only if it conflicts with the management of the firm)

Denial Letter

- Written explanation
- Waiting period to re-apply must not exceed 12 months
- Include appeal procedures

[Sample Denial Letter 1](#)

[Sample Denial Letter 2](#)