

**Updated 7/31/2018**

## **Disadvantaged Business Enterprise Program (DBE)**

### **Frequently Asked Questions (FAQ)**

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 North Dakota 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, DBE, and contractor experience and input concerning the determination of compliance with Part 26.

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

A disadvantaged business enterprise (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 North Dakota Unified Certification Program?**

The North Dakota Unified Certification Program (UCP) was developed under a mutual agreement between certifying agencies, creating "one-stop shopping" for Disadvantaged Business Enterprise (DBE) certification in North Dakota. The UCP Board certifies eligible firms throughout the state for Federal Aviation Administration, Federal Transit Administration, and Federal Highway Administration.

## **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. Eligibility must be proved by a DBE applicant. The following are six of the requirements stated in the regulation. For more specific criteria, refer to 49 CFR, Part 26.

**A. 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.

**B. 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.

**C. 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 \$23.98 million in the previous three fiscal years. Depending on the type of work the business performs, other size standards may apply.

**D. 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.

**E. Independence:** The business must not be affiliated with 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.

**F. 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 Enrollment Card or 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 Financial section of the online application?**

The majority disadvantaged owner(s) whose ownership and control is/are being relied upon for DBE certification should provide a personal financial statement. 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 personal financial statements.

## **9. When completing the application, 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 application together with any debt you owe against it. The equity in your primary residence does not count

toward the allowed \$1.32 million; however, the adjustment will be made by the UCP's Financial Board member.

### **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?**

Your firm is certified until your certification is removed or you withdraw from the program. However, program eligibility must be reviewed annually. This is called an annual eligibility review. The affidavit must affirm that there have been no changes in your firm's circumstances that would affect its ability to meet size, disadvantaged status, ownership, and control requirements. This update requires you to submit the most recent business taxes. If your eligibility documentation is not submitted timely, it may be cause for removal from the program for failure to cooperate.

### **12. I'm an out-of-state business seeking work in North Dakota, can I be certified as a DBE?**

Yes, however your firm must first be certified in your home state. For example, if your firm is based in Minnesota, you must proceed through Minnesota's DBE certification process before seeking DBE certification in North Dakota. Once you are certified as a DBE in your home state, you can then apply for certification in North Dakota.

### **13. Is there a cost to the applicant for the certification process?**

No. The application is completed entirely online at no additional cost to the applicant.

### **14. I have questions regarding the DBE application; who can I contact for assistance?**

There are detailed application instructions available online at the Civil Rights Certification and Compliance System webpage. If you have questions about the program, the Department's DBE Supportive Services provider Project Solutions, Inc., is available free of charge to answer any additional questions.

Project Solutions, Inc., Denae Johnson, [denae.johnson@projectsolutionsinc.com](mailto:denae.johnson@projectsolutionsinc.com), (701) 214-5775

### **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. Department of Transportation

1200 New Jersey Avenue, SE

Room W78-338

Washington, DC 20590 Phone: 202-366-4070

Your letter to the U.S. Department of Transportation must contain the following: information and arguments concerning why the North Dakota 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.

### **16. 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. The Department will only act on complete applications. Incomplete applications will not be presented to the UCP Board for consideration.

Home office/on site reviews are required by regulation. North Dakota applicants will be reviewed by North Dakota Department of Transportation staff at their business premises to determine managerial and operational aspects. An out-of-state firm's home state is asked to forward the firm's home office/onsite review to the Department.

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

No, the SBA 8(a) Program and the DBE Program are separate Federal certifications. Currently, one must apply with both SBA and NDDOT to attain both certifications.

### **18. I'm a prime contractor, how can I find DBE firms?**

All certified firms are listed in the DBE Directory-

<https://dotnd.diversitycompliance.com/FrontEnd/VendorSearchPublic.asp?TN=dotnd&XID=274>

To access the database and find DBE firms, click "**Search**" at the bottom of the page to view all DBEs in the ND DBE Directory.

### **19. My business is certified as a DBE, what resources are available to help me locate business?**

1. DBE Supportive Services provides an orientation to "Doing Business with NDDOT." This orientation is a valuable tool for firms actively looking to work in our state.
2. The DBE Newsletter contains valuable information to DBEs working and searching for work in the state on highway transportation related jobs.
3. The Civil Rights ListServ carries announcements on Highway construction bid openings, and non-highway related work such as Airport and Transit where DBE certification may be counted toward a project goal. The ListServ is our primary communication tool with DBEs. Important program announcements are sent to your email inbox. Those interested in receiving this information MUST sign up for the service at:  
<http://web.apps.state.nd.us/itd/listserv/maint.htm?reqid=DOT-CRO&request=AgencyListServEnterEmail>
4. Visit the Department's website to view all upcoming jobs currently out for bid or for RFPs announcing consulting opportunities: <https://www.dot.nd.gov/business/>

### **20. How do I apply for DBE Certification in North Dakota?**

- Access the online application system at:  
<https://dotnd.diversitycompliance.com/>
- Click the Apply for Certification link:  
<https://dotnd.diversitycompliance.com/FrontEnd/StartCertification.asp?TN=dotnd&XID=8147>
- Then click Create Account and follow the prompts.

## **21. How do I submit my annual eligibility review documents to support my DBE Certification in North Dakota?**

- Access the online application system at: <https://dotnd.diversitycompliance.com/>
- Click the Apply for Certification link:  
<https://dotnd.diversitycompliance.com/FrontEnd/StartCertification.asp?TN=dotnd&XID=8147>
- Choose a link below Renew Your Certification – either Login or Lookup Account.

## **22. What should I do if I have issues with the software?**

From the main Civil Rights Certification and Compliance System homepage:

<https://dotnd.diversitycompliance.com/>

- Click Help/First Time Visitors to learn how to:
  - Log in to the system
  - Retrieve your username
  - Change your password
  - Get help from customer/technical support
  
- Click Contact Us & Support to request support

## **23. Will there be any training classes on how to use the new system?**

- From the main Civil Rights Certification and Compliance System homepage:  
<https://dotnd.diversitycompliance.com/>
  - Click Training & Events to learn select free classes.
    - Hour-long web-based courses with live instructors and other users just like you.

## **24. Does North Dakota accept my home-state DBE certification without further procedures as allowed in 49 CFR § 26.85 Interstate certification?**

No, North Dakota follows the second option identified in 49 CFR § 26.85 and does not accept another state’s certification “without further procedures.” Therefore, out-of-state applicants must submit all documentation that the home-state received on which it based the decision to grant the firm’s DBE Certification. A complete list of required documents is stated in the federal rule starting at 49 CFR §26.85 (c).

- Before an out-of-state firm will be considered in North Dakota, the firm must first be certified in its home state.

- Your firm does not need to create a new certification application. Instead, you need to simply provide all documentation that your home-state received on which the DBE Certification decision was based.
- As required in 49 CFR Part 26, the home-state will have made its determination to certify based on:
  - Federal tax returns – both personal and business
  - Proof of ownership
  - Proof of group membership
  - Your company’s organizational documents such as by-laws, partnership agreements, articles of incorporation and the like.
  - A list of equipment used to perform the work your firm is certified to perform.
  - Affidavits of No Change
  - Other items may have been included in the supporting materials on which your certification was based.
- An interstate certification application is not complete when the applicant has not submitted the supporting documentation.

Submitting an interstate certification application through NDDOT’s online application system allows a quick and paper-less means to apply for DBE Certification in North Dakota. To begin your application, navigate to: <https://dotnd.diversitycompliance.com/>

## **25. I’m already certified in North Dakota, do I have to create a new account?**

No, if you are currently a DBE in North Dakota, you are already in the system.

- Navigate to the main Civil Rights Certification and Compliance System portal page.
- Click on the Apply for Certification link on the right side of the Log In page.
- Locate “I Forgot My Username & Password” in the center of the page under the blue Renew Your Certification bar.
- Click Lookup Account.
- Enter your Federal Tax ID (or social security number in the case of a sole proprietorship) to locate your account.
- Click “Certs” link at the right side of your entry.

## **26. I’m a new DBE program applicant; do I have to create a new account?**

Yes, if you are not already a DBE certified in North Dakota or another state that uses the B2Gnow Certification & Compliance System.

- Navigate to: <https://dotnd.diversitycompliance.com/> to search the system's user.
- Enter search parameters in the Search box and click the Search button. Search results are then displayed at the bottom of the page.
- If you do not see your business listed in the search results, or the contact information is incorrect, send an email to the customer service contact listed on the Contact Us & Support page. Include your business and personal contact information for verification.
- Additional information may be requested for security purposes.



## **27. I'm currently a DBE certified in North Dakota; do I have to create a new account?**

No, you are already in the system.

- Navigate to the main Civil Rights Certification and Compliance System portal page.
- Click on the Apply for Certification link on the right side of the Log In page.
- Locate "I Forgot My Username & Password" in the center of the page under the blue Renew Your Certification bar.
- Click Lookup Account.
- Enter your Federal Tax ID (or social security number in the case of a sole proprietorship) to locate your account.
- Click "Certs" link at the right side of your entry.

## **28. I'm currently a DBE certified in another state; do I have to create a new account?**

If you are currently certified in a state that uses the B2Gnow Certification & Compliance System, you are already in the system.

- Navigate to the main Civil Rights Certification and Compliance System portal page.
- Click on the Apply for Certification link on the right side of the Log In page.
- Locate "I Forgot My Username & Password" in the center of the page under the blue Renew Your Certification bar.
- Click Lookup Account.
- Enter your Federal Tax ID (or social security number in the case of a sole proprietorship) to locate your account.
- Click "Certs" link at the right side of your entry.

## **29. How should I let the UCP know that my DBE firm's address has changed or that we have a new telephone number?**

For any simple change of contact information that needs to be made in the system, email customer support at: [crsshelp@nd.gov](mailto:crsshelp@nd.gov)

You will receive a list of any additional information that may need to accompany contact information changes made intermittently between annual eligibility reviews and annual Notices of Change Affidavits.

## **30. What types of documents do I need to submit with my annual Notice of Changes Affidavit (Notice of No Change)?**

Material changes to your business operations necessitate supporting documentation. Questions related to documentation may be directed to DBE Supportive Services at [dkdbe@midco.net](mailto:dkdbe@midco.net) or [crsshelp@nd.gov](mailto:crsshelp@nd.gov).

- Equipment – include new titles, registration cards, proof of insurance, and proof of purchase.
- Agreements/Contracts – include new business agreements/contracts, i.e., lease or rental, consultant, workforce/employment, management, loans, partnership.
- Updates/changes in governing documents such as articles of incorporation or by-laws.

- Minutes of stockholders/ board of directors meetings.
  - Stock ownership – any changes in stock issued, sold, transferred, etc.
  - New Certifications or Denials – (DBE, SBA 8 (a) or SDB) made by any state or agency.
  - Interstate Certifications - Current Home-state DBE certificate/letter/directory entry
  - Any material change to your business that may affect your eligibility based on the federal rules governing DBE Program eligibility.

### **31. How can I find contracting opportunities on transportation related projects in North Dakota?**

- If you intend to locate work or generate sales in North Dakota, it is very important that you sign up for the Department's ListServ. NDDOT circulates notices of project changes, wage rates, requests for bids, and other important DBE Program and construction project information through the Civil Rights Division's ListServ. Sign up for the ListServ: <http://web.apps.state.nd.us/itd/listserv/maint.htm?reqid=DOT-CRO&request=AgencyListServEnterEmail>
- Prime contractors and large subcontractors sign in to the Bid Opening Sign In System to indicate their interest in bidding on work. Navigate to <http://www.dot.nd.gov/business/bidinfo.htm> to access the Report for Prime Contractor & Sub over \$500K Sign-In. Then call, email, or fax bidders with your quote using the contact information provided there.

### **32. Where can I find more information regarding the ND Civil Rights Certification & Compliance System?**

Check the ND CRCCS FAQs on NDDOT's DBE Program Home Page

<https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>. They are being added to all the time

### **33. How does my business structure impact my eligibility?**

Different business structures can mean that monies from your business flow through your personal income, specifically when your business is an S-Corporation. When monies flow through your personal income they are counted towards your adjusted gross income unless you can provide proof that those funds were allocated back into the business or used to pay business related expenses. If you cannot and your adjusted gross income exceeds the dollar threshold for DBE Certification eligibility requirements your firm may graduate. There is no clause for the type of business structure a firm has in CFR so be mindful how it may impact your certification.

### **34. Does North Dakota graduate firms based on the \$350,000 three year average adjusted gross income threshold?**

The short answer is yes. In 49 CFR 26.67 it states

*(ii)(A) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as a certifying agency, you may consider factors that include, but are not limited to, the following:*

- (1) Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;*

Because CFR states certifying agencies may consider the \$350,000 three year average adjusted gross income threshold as a determining factor to rebut the economic disadvantage some states chose to use this criteria and some do not. North Dakota has historically used this criteria as a threshold and maintains that position currently.