

6. GUIDELINES FOR DBE CERTIFICATION

6.1 Unified Certification Program (UCP)

The Oregon Department of Transportation (ODOT) has participated in a Unified Certification Program (UCP) since January 1988 through Oregon Revised Statute (ORS) Chapter 200 and Oregon Administrative Rule (OAR) Chapter 123 Division 200. The sole certification agency for the State of Oregon is the Office of Minority, Women and Emerging Small Business (OMWESB) which is housed within the Oregon Business Development Department (OBDD). See Section 6.2 below.

A. Civil Rights Compliance Tracking System (CRCT)

See Section 7.0

B. Directory of Certified Firms

OMWESB maintains a Unified DBE Directory in accordance with 49 CFR 26.81(g). The directory identifies all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, e-mail address (if available), contact name, owner(s) gender and ethnicity with ownership interest percentage, NAICS code(s) and a description of the type of work the firm has been certified to perform as a DBE. The information is revised daily and the directory is available electronically at:

<http://www.oregon4biz.com/Grow-Your-Business/Business-services/Minority-Owned-Business-Certification/>.

6.2 UCP Responsibilities

A. ODOT Office of Civil Rights

As provided under 49 CFR 26, only firms owned and controlled by socially and economically disadvantaged person(s) are to benefit from the DBE Program. ODOT Office of Civil Rights is responsible for ensuring compliance with the federal regulations in the determination of a DBE certification. ODOT provides funding to OMWESB to support the DBE Certification processing.

B. Office of Minority, Women, and Emerging Small Business (OMWESB)

Certification authority for the ODOT DBE Certification Program Component has been delegated to OMWESB through an interagency agreement with the Oregon Business Development Department (See Exhibit P). ODOT retains responsibility to USDOT for assuring that certification of DBEs is performed consistent with 49 CFR 26 standards.

OMWESB provides staff to conduct DBE certification, certification review, denials, de-certification, appeals, challenges, investigations of third party allegations, and public awareness and outreach activities pertaining to certification programs. This office became the certification authority for state programs under Oregon Revised Statutes (ORS) Chapter 200, in January 1988.

An approved Unified Certification Program Partnership Agreement has been in effect since 2000. ODOT and other USDOT federal aid recipients have signed the agreement.

The Oregon Department of Justice provides legal counsel for OMWESB.

6.3 Certification Eligibility Requirements

The standards in 49 CFR 26, Subpart D, are used by OMWESB in determining whether a firm is owned and controlled by one or more disadvantaged individuals and whether such firm is eligible to be certified as a DBE. Certification procedures are outlined in OAR 123 Division 200 (See Exhibit O).

A. Burdens of Proof (§ 26.61)

The firm seeking certification has the burden of demonstrating to OMWESB, by a preponderance of the evidence, that it meets the requirements concerning group membership or individual disadvantage, business size, ownership, and control. OMWESB will make determinations concerning whether individuals and firms have met the burden of demonstrating group membership, ownership, control, and social and economic disadvantage by considering all the facts in the record, viewed as a whole. A record is defined as all material submitted to OMWESB by the firm seeking certification and any other information available to OMWESB in performing its investigation. For a DBE Certification Application see Exhibit Q.

B. Business Size (§ 26.65)

The firm's size (including its affiliates), currently cannot exceed the following limits:

| Type of Firm | Average Annual Gross Receipt for three preceding years |
|---------------------------------|--|
| General Construction Contractor | \$22.41 Million |
| Special Trade Contractor | \$14.0 Million |
| Architectural | \$7.0 Million |
| Engineering, | \$14.0 Million |

General Construction Contractors standards are established by Section 106(c) of the STURAA and reviewed by the US Department of Transportation. All other standards are those established by the Small Business Administration (SBA) and apply to all government subcontractors. See 13 CFR, Part 121. A firm that exceeds these gross receipts levels or employee numbers is not eligible for certification, even if minorities or women hold controlling interest. The overall DBE size cap is adjusted annually.

C. Disadvantaged Group Membership (§ 26.63)

For the purposes of certification, OMWESB will presume that members of the groups identified herein are socially and economically disadvantaged unless the presumption is rebutted. These individuals do not have the burden to prove they are socially and economically disadvantaged. However, if OMWESB has reason to question whether an individual is a member of such a group, OMWESB will require the individual to produce appropriate documentation of group membership. In making a group membership determination, OMWESB will consider: 1) whether or not the person has held himself/herself out to be a member of the group over a long period of time prior to application for certification; and 2) whether the person is regarded as a member of the group by the relevant community. If OMWESB determines an individual is not a member of a designated group, the individual must demonstrate social and economic disadvantage on an individual basis using the guidelines in 49 CFR part 26, Appendix E. OMWESB's decision concerning membership in a designated group will be subject to certification appeals procedures.

Individuals who are United States citizens (or lawfully admitted residents) who are also members of the following designated groups as defined in 13 CFR 124.103(b) will be presumed to be socially and economically disadvantaged:

| | |
|------------------------------|--|
| Black Americans | Origins in any black racial groups of Africa. |
| Hispanic Americans | Mexican, Puerto Rican, Cuban, Central or South American, Portuguese or other Spanish culture or origin regardless of race. |
| Asian-Pacific Americans | Origins in Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the US Trust Territories of the Pacific, and the Northern Marianas. |
| Native Americans | American Indians, Eskimos, Aleuts or Native Hawaiians. |
| Subcontinent Asian Americans | Origins in India, Pakistan, Sri Lanka, Bhutan, the Maldives Islands, Nepal or Bangladesh. |
| Women | |

D. Small Business Administration 8(a) Program

There is currently no agreement in effect to accept 8(a) certification for the DBE Program. Businesses certified in any of the Small Business Administration programs (8(a), SDB, HubZone, etc.) must apply for DBE certification by submitting the uniform application and all requested supporting documents.

E. Individual Determination of Social and Economic Disadvantage (§ 26.67)

If an individual is not a member of a designated group, s/he must demonstrate that s/he is socially and economically disadvantaged in accordance with 49 CFR Part 26, Appendix E.

(1) Social Disadvantage

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. OMWESB will consider any relevant evidence in its assessment of this element, and in every case OMWESB will consider education, employment, and business history to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(2) Economic Disadvantage

Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or a similar line of business who are not socially disadvantaged. In considering diminished capital and credit opportunities, OMWESB will examine all factors relating to personal financial condition including personal income for the past two years, personal net worth, and the fair market value of all assets applicable. OMWESB will also consider the financial condition of applicants compared to financial profiles of small businesses in the same primary industry classification(s) or similar lines of business.

F. Independence (§ 26.71)

49 CFR 26.71 (b) states, in part:

Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

G. Ownership (§ 26.69)

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals and must be reflected in the firm's partnership agreement. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in the ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership and share in the risk and profits commensurate with their ownership interest, as demonstrated by the substance, not merely the form, of arrangements. OMWESB will consider factors such as whether the disadvantaged individual made contributions of capital and or expertise that were substantial, and that the disadvantaged individual's business interests were not gifted or transferred from a non-DBE firm or non-disadvantaged individual related to the applicant DBE, or acquired through the improper counting of marital assets.

The specific considerations for determining ownership by socially and economically disadvantaged individuals are outlined in the regulations as may be supplemented by written procedures issued by USDOT from time to time.

H. Control (§ 26.71)

Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, OMWESB will scrutinize relationships with non-DBE firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. OMWESB will consider present or recent employer/employee relationships, the firm's relationship with prime contractors, and factors related to the independence of a potential DBE firm. Further, OMWESB will consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. The socially or economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations. OMWESB will consider factors such as the position, managerial role, time commitment and competence in the types of work the firm conducts of the disadvantaged individual owners, the delegation of authority to non-disadvantaged individuals, licensing, and the firm's capacity to do the work.

OMWESB will consider whether any non-disadvantaged owner or individual is disproportionately responsible for directing the daily operations of the firm.

The specific considerations for determining control by socially and economically disadvantaged individuals are outlined in the regulations as may be supplemented by written procedures issued by OMWESB from time-to-time.

I. Other Considerations

(1) Commercially Useful Function

OMWESB will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE. Consideration of whether a firm performs a commercially useful function pertains solely to counting toward DBE goals any participation of firms which have already been certified as DBEs.

(2) Pattern of Conduct

In making certification decisions, OMWESB will consider whether a firm has exhibited a pattern indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(3) Present Circumstances

OMWESB will evaluate the eligibility of a firm on the basis of present circumstances and will not refuse to certify a firm based solely on historical information indicating lack of ownership or control by socially and economically disadvantaged individuals at some time in the past. If the firm currently meets ownership and control standards OMWESB will not refuse to certify a firm solely on the basis that it is a newly formed entity.

(4) DBE Cooperation

OMWESB expects DBE firms and firms seeking DBE certification to cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

(5) For-Profit Firms

Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(6) Subsidiaries and Affiliates

An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided by this policy, a firm that is not owned by such individuals, but instead is owned by another firm, even a DBE firm, cannot be an eligible DBE.

(7) Pre-qualification

OMWESB will not require a DBE firm to be pre-qualified as a condition for certification unless ODOT requires all firms that participate in its contracts and subcontracts to be pre-qualified.

(8) Tribal Organizations

OMWESB recognizes that a firm owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for certification as long as such firm meets the size standards and is controlled by socially and economically disadvantaged individuals.

J. Statement of Personal Net Worth (PNW)

Each socially and economically disadvantaged individual owner must demonstrate that s/he does not have a personal net worth exceeding \$1.32 million. In determining net worth, OMWESB will exclude an individual's ownership interest in the applicant firm and the individual's equity in his/her primary residence. If the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage based on group membership or the individual's demonstration of economic disadvantage will be conclusively rebutted without any further formal proceedings.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his/her ownership and control of the firm cannot be used for the purpose of DBE eligibility unless and until s/he makes an individual showing of social and or economic disadvantage in the future. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual will no longer be eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

A verification of Personal Net Worth will be included with the application form submitted to OMWESB for consideration. Personal financial information shall be considered confidential and shall not be disclosed without the express written consent of the applicant.

K. Joint Venture

A joint venture is eligible if the DBE partner of the joint venture is a state certified DBE and the DBE partner is responsible for a clearly defined portion of the work to be performed and shares accordingly in the ownership, control, management responsibilities, risks, and profits of the joint venture.

Joint venture applications are certified by the ODOT on a project by project basis. Applications shall be submitted to the ODOT Procurement Office and the Office of Civil Rights will evaluate and determine compliance in accordance with established procedures.

6.4 Application Procedure

ODOT will ensure that only firms certified as eligible DBEs participate as DBEs in the DBE program. All firms seeking certification with ODOT are required to submit a notarized application to the OMWESB.

ODOT will require potential DBEs to complete and submit to OMWESB the appropriate application form included in 49 CFR part 26, and any supporting documents necessary to verify eligibility. OMWESB will ensure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person authorized by state law to administer oaths or in the form of an un-sworn declaration executed under penalty of perjury of the laws of the United States. OMWESB will review all information in the form prior to making a decision about the DBE eligibility of the firm.

The applicant will also be required to submit the following:

- A. A signed, notarized certification of disadvantage (including a narrative if the individual is demonstrating disadvantage on an individual basis); and
- B. A signed, notarized statement of personal net worth with supporting documentation.

OMWESB will not impose an application fee for firms to participate in the DBE certification process.

OMWESB will safeguard from disclosure, to unauthorized persons, all information gathered as part of the certification process that may be regarded as proprietary or their confidential business information, consistent with applicable federal, state and local laws.

Failure of the applicant to provide all necessary information and documentation as required shall constitute the basis for denying certification.

A. Supplemental Application Verification Documents

(1) Sole Proprietor

- (a) Individual federal tax returns for the last three- (3) years (Schedule C, Profit and Loss Statement).
- (b) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.
- (c) Rental/lease agreements, and professional service agreements (for office space, equipment, related to the business).
- (d) Proof of ethnicity/gender (birth certificate, tribal enrollment documents, passport, driver's license, etc.)
- (e) Company profile including a brief description of the firm's product or services.
- (f) Necessary licenses to conduct the business, e.g., contractor's license (construction, landscaping, electrical, plumbing, welding, engineering), city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.
- (g) Certification letter from the individual's home state, if the business is not located in Oregon.
- (h) Assumed Business Name registration, if applicable.

(2) Limited Liability Company (LLC)

- (a) Federal tax returns for the last three- (3) years.
- (b) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.
- (c) Rental/lease agreements and professional service agreements (for office space, equipment, etc.)
- (d) Proof of ethnicity/gender (birth certificate, tribal enrollment, passport, driver's license, etc.).
- (e) Company profile including a brief description of the firm's product or services.
- (f) Necessary licenses to conduct the business, e.g., contractor's license (construction, landscaping, electrical, plumbing, welding, engineering), city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.

- (g) Articles of Organization.
 - (h) Operating Agreement.
 - (i) Minutes of the most recent company meetings affecting ownership, management, and control.
 - (j) Certification letter from the state of incorporation, if the business is not located in Oregon.
- (3) Corporations
- (a) Corporate federal tax returns for the last three- (3) years (first two pages).
 - (b) Resumes of majority owner(s) and key employees if any. Please include previous work experience with dates and specific duties within this business.
 - (c) Rental/lease agreements and professional service agreements (for office space, equipment, etc.)
 - (d) Proof of ethnicity/gender (birth certificate, tribal enrollment, passport, driver's license, etc.).
 - (e) Company profile including a brief description of your firm's product or services.
 - (f) Necessary licenses to conduct your business, e.g., contractor's license (construction, landscaping, electrical, plumbing, welding, engineering), PUC authority, city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.
 - (g) Articles of Incorporation AND amendments, including date approved by State.
 - (h) Minutes of the most recent corporate meetings affecting ownership, management, and control.
 - (i) Corporation by-laws.
 - (j) Copy of stock certificates issued (not specimen copy, both sides).
 - (k) Stock transfer ledger.
 - (l) Certification letter from your home state, if your business is not located in Oregon.
- (4) Partnerships
- (a) Federal, partnership tax returns for the last three- (3) years (first two pages).
 - (b) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.
 - (c) Rental/lease agreements and professional service agreements (for office space, equipment, etc.) related to your business.
 - (d) Proof of ethnicity/gender (birth certificate, tribal enrollment, passport, driver's license, etc.).
 - (e) Company profile including a brief description of your firm's product or services.
 - (f) Necessary licenses to conduct your business, e.g., contractor's license (construction, landscaping, electrical, plumbing, welding, engineering), PUC authority, city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.

- (g) Partnership agreement including buy-out rights and profit sharing agreement (signed and dated).
 - (h) Certification letter from your home state, if your business is not located in Oregon.
- (5) New Business (less than one year)
- (a) Canceled checks relating to the business; OR
 - (b) An invoice with paid receipt or canceled checks relating to the business.
 - (c) One reference for whom work has been performed or to whom goods or materials have been sold during the prior year.
 - (d) One reference from whom goods or materials have been purchased for the business or from whom major equipment has been purchased or leased.
 - (e) Copies of office space and equipment lease agreements.

As a new business, the firm may not have federal tax information available at this time. Ensure that the firm has indicated that they are a new business on the application.

B. On-site Reviews

OMWESB schedules an on-site review when it is satisfied that applications and supporting documentation have been received and are complete. In addition, whenever possible, the Certification Specialist will visit an active jobsite and interview the DBE owner and employees to determine independence and control.

- (1) The Certification Specialist assigned the DBE file will schedule an on-site interview with each DBE applicant firm requesting to bid on FHWA, FAA and FTA projects.
- (2) The OMWESB Certification Specialist will review the application prior to the on-site interview to assist in developing any additional questions that will help clarify the applicant's status.
- (3) The OMWESB Certification Specialist normally contacts the DBE applicant firm, by phone, to advise of and arrange for, the review. If the DBE applicant is unable to be contacted by phone or mail, or delays the date of the review without good reason, or fails to appear for the scheduled review, efforts are made to reschedule the on-site review. Continued failure of the applicant to schedule and attend an on-site and jobsite interview may be deemed a failure to cooperate, and can lead to certification denial.
- (4) The OMWESB Certification Specialist conducts on-site reviews by inquiring of and obtaining information as follows:
 - (a) Firm name.
 - (b) Directions to firm's location.
 - (c) Principal contact and phone number.
 - (d) Organizational structure.
 - (e) Persons interviewed and position with firm.
 - (f) Firm's primary line of business.
 - (g) Identities of the firm's board of directors.
 - (h) Frequency that board meets.
 - (i) Firm's bonding/insurance company.

- (j) Current bonding limitation
- (k) Determine:
 - (i) Firm's bond/insurance agent
 - (ii) Firm's attorney
 - (iii) Firm's CPA
 - (iv) Firm's banker(s)
- (l) Number of permanent employees.
- (m) Who approves:
 - (i) Hiring and dismissal of employees
 - (ii) In this person's absence
- (n) Employee recruiting.
- (o) Supervisors employed.
- (p) Explanation of supervisor's duties and responsibilities.
- (q) Determine how the disadvantaged owner acquired interest in the firm.
- (r) Who contributes capital, equipment, real estate, inventory, etc.
- (s) Technical assistance provided by others.
- (t) Total hours per day and days per week DBE owner actively engaged in firm's business.
- (u) DBE owner's daily duties.
- (v) Is DBE owner employed elsewhere - if yes, where?
- (w) Who makes major business decisions (i.e. expansion, diversifying)?
- (x) Marketing of the firm, (how and who's responsible).
- (y) Dispersal of funds, (how and under whose approval).
- (z) Signatures on payroll and other checks, (who signs).
- (aa) Any loan negotiation/arrangement information (who does this).
- (bb) Firm's line of credit and it's limits.
- (cc) Contracts currently active.
- (dd) Business tax return information (who prepares, who signs).
- (ee) Description of firm's bidding/estimating process.
- (ff) Description of firm's process of monitoring job costs.
- (gg) Description of methods used to resolve field problems.
- (hh) Who negotiates contract disputes.
- (ii) Explanation of relationships with other firms who might provide;
 - (i) Manpower/personnel
 - (ii) Equipment
 - (iii) Office space
 - (iv) Yard or warehouse space
- (jj) Information which might show the DBE owner was employed by any board member or officer of this firm.
- (kk) Average length of time firm's products are stored/inventoried.
- (ll) Salaries paid to management personnel.
- (mm) Explanation of spouse's relationship to firm - other firms.
- (nn) Review firm's business plan (goals for future growth, etc.).

C. On-Site Review Observations and Special Considerations

- (1) Upon request of OMWESB, the ODOT DBE Program Manager may assist in the on-site review. When conducting on-site reviews, Certification Specialists actively observe various activities and items to

aid in determining certification eligibility. In addition to visiting the business office, the Certification Specialist will accompany the applicant to a job site, if one is available, and observe the work in progress. If the applicant firm is out-of-state, OMWESB requests a copy of the on-site review document from the state in which the applicant's principal place of business is located. Activities and items include:

- (a) Signing.
- (b) Vehicles: Number, Company Logo.
- (c) Office arrangements.
- (d) Nearby businesses.
- (e) Workers present.
- (f) Who dominates conversation.
- (g) Availability of firm to clients.
- (h) Who appears to have expertise and control.
- (i) Photos of business and principal.
- (j) Other relevant items and activities.

(2) Certification Specialists also observe closely those situations where:

- (a) The disadvantaged business enterprise in which the woman's male relative (husband, brother, father) has extensive experience in the same line of work and may also be actively involved in the applicant's firm.
- (b) The disadvantaged business enterprise in which a minority owner has close ties with a prime contractor, e.g. previously worked only for that contractor, or a prime contractor is 49 percent owner of the DBE firm.

(3) The on-site review form is signed and dated by the Certification Specialist conducting the review.

D. Criteria for Evaluating an Applicant's Eligibility

(1) Business Size

To be an eligible DBE, a firm (including its affiliates) must be an existing small business as defined by SBA standards. OMWESB will apply current SBA business size standards found in 23 CFR Part 121 appropriate to the types of work the firm seeks to perform in USDOT-assisted contracts. Even if the firm meets the SBA requirements, a firm is not an eligible DBE in any federal fiscal year if the firm (including affiliates) has had average annual gross receipts as defined by SBA regulations over the firm's previous three (3) fiscal years in excess of \$22.41 Million, as adjusted for inflation from time to time by USDOT.

(2) Social and Economic Disadvantage Status

Once an applicant firm is determined to be a small business, social and economic disadvantage is to be reviewed if the firm is applying for disadvantaged business status. Guidance for determining social and economic disadvantage is provided under Appendix E to 49 CFR 26. Social and Economic disadvantaged status may be conferred upon applicant firms in instances where the firm:

- (a) Has been granted 8(a) certification by the Small Business Administration.

- (b) Is owned and controlled by one or more women or a member(s) of one of the minority groups designated in 49 CFR 26.67.
- (c) Is owned and controlled by an individual(s) who, although not a woman or member of one of the minority groups designated in 49 CFR 26, establishes social and economic disadvantage based on identification with another group.

(3) Minority Group Membership

In cases where the applicant claims social and economic disadvantage based on membership in one of the designated minority groups, the state shall ensure that the applicant's minority status is clearly established. Once minority status is established, the applicant shall be rebuttably presumed to be socially and economically disadvantaged. This means that the applicant's social and economic disadvantage status is established as a fact until the presumption is effectively rebutted. However, the state is expected to require even members of the designated minority groups to prove their disadvantaged status if reasonable evidence to rebut the presumption is available to the state.

(4) Individual Determinations

Finally, persons who are not members of one of the designated minority groups may request the state to make an individual determination that they are socially and economically disadvantaged. The state may, at its discretion, make these individual determinations consistent with the guidance in 49 CFR 23, Subpart D Appendix C, or refer such cases to the SBA where they may apply for 8(a) status. For example:

- (a) Does the individual have a chronic physical handicap, which has restricted and still restricts professional acceptance, employment or business mobility? If so, explain fully.
- (b) Has the individual's cultural or social background resulted in chronic underemployment, limited educational opportunities or personal deprivation? If so, explain fully.
- (c) Has the individual experienced low-income status because of apparent discriminatory practices? If so, explain precisely how such discriminatory practices led to your having limited access to needed technical, financial, or management resources and equal opportunity in obtaining contracts.

Outline other specific and pertinent examples of chronic social and economic disadvantage not covered above.

(5) Rebuttable Presumption of Disadvantage Status

The presumption of social and economic disadvantage operating in favor of the designated minority groups may be rebutted at any time before or after certification.

If the state comes into possession of credible information that would lead a reasonable person to believe that a minority individual is not socially or economically disadvantaged, the presumption is no longer operative and the burden of proof shifts back to the applicant. The existence of the presumption does not mean that the certifying agency must ignore obvious evidence that any applicant for certification is not socially or economically disadvantaged unless a third party brings a challenge. It means, rather, that in the absence of such evidence, it must presume

that a minority or woman applicant is socially and economically disadvantaged, and cannot require the applicant to prove it.

Practically speaking, the existence of clear evidence that an otherwise qualified minority applicant is not disadvantaged puts such applicant in a position similar to a challenged minority or an individual claiming disadvantaged who is not a member of a designated group. If the state tentatively determines, on its own initiative based on such clear evidence, that the owner of the firm is not socially and economically disadvantaged, the state should ensure that the owner(s) are afforded procedural safeguards equivalent to that provided in the case of third party challenges.

(6) Ownership and Control

Once business size and social and economic disadvantage status has been determined, ownership and control must be evaluated to ensure that firms applying for DBE certification are in fact independent firms, owned and controlled by one or more socially and economically disadvantaged individuals. Similarly, firms applying for DBE certification on the basis of female ownership must be evaluated to ensure that they are independent and are owned and controlled by women. An independent firm is one the viability of which does not depend on its relationship with another firm or firms.

Under operational control, the applicant must have an overall understanding of and managerial and technical competence and experience directly related to the business operations.

To determine managerial control, the applicant must demonstrate that they possess the power to direct or cause the direction of the management and policies of the firm.

Applicant firms jointly owned by husband and wife will be treated the same irrespective of whether the state has a community property law. The OMWESB will determine eligibility by ensuring that the firm is in fact at least 51 percent owned by the woman and the firm's management and daily business operations are controlled by the woman who owns it. In reaching that conclusion, the OMWESB will determine whether the firm meets the eligibility standards contained in 49 CFR 26.

(7) Personal Net Worth

An individual, whose personal net worth exceeds \$1,320,000, excluding personal residence and interest in the business, shall not be deemed to be economically disadvantaged.

The OMWESB will obtain a signed and notarized statement of personal net worth from all persons who claim to own and control a firm applying for DBE certification and whose ownership and control are relied upon for DBE certification. These statements will be accompanied by appropriate supporting documentation.

E. Out-of-State Applications submitted to OMWESB

When an out-of-state firm currently certified in its home state applies for DBE certification in Oregon, the Office of Minority, Women & Emerging Small Business (OMWESB), will accept the out-of-state's certification and certify the firm providing the firm submits the following information:

- (1) Completed Uniform DBE Application (or copy from home state UCP if recent - within six months)
- (2) Current DBE certification letter from your home state (must include NAICS codes in which you are certified);
- (3) Home state UCP contact information (phone, email) for requesting additional DBE documentation as necessary;
- (4) Business federal tax returns for previous three years, all schedules;
- (5) Current Personal Financial Statement (signed/dated);
- (6) Individual federal tax returns for each owner claiming disadvantaged status for previous three years, all schedules;
- (7) Licenses/registrations to do business in Oregon (Construction Contractor's Board, Engineering, Electrical, Plumbing, Trucking, Foreign Business Registration with the Oregon Secretary of State, etc.)
- (8) Driver's license for all disadvantaged owners
- (9) OMWESB will:
 - (a) Administrative Specialist will enter the out-of-state DBE application as received on dbase and assign to Cert. Specialist for review
 - (b) Certification Specialist will contact the home state within seven days of receipt of the DBE application to request a copy of the onsite report and verification of current DBE certification status
 - (c) Certification Specialist will provide notice to the applicant regarding certification no later than thirty days from the date on which all information listed above is received
 - (d) Upon receiving new out-of-state DBE applications or certification review forms, OMWESB Certification Specialists will check the Ineligibility Determination Online Database (DOCR) to see if the business has been included on the list.
 - (e) OMWESB staff will regularly check the DOCR regarding DBE decertifications. If OMWESB receives information regarding the decertification of a currently certified out-of-state DBE (from DOCR), Admin. Specialist will pull the certified file and assign to a Cert. Specialist who will contact the home state for copies of their decertification determination report and decertification notice.
 - (f) When decertification information is received from the home state UCP, OMWESB will notify the applicant in writing and initiate decertification in Oregon based on the home state's determination.
 - (g) OUT-OF-STATE REQUESTS FOR DBE INFORMATION:
 - (h) OMWESB staff will email copies of the onsite visit reports, any updates to site visit review and any evaluation of a certified DBE based on the site visit to the out-of-state UCP within seven days of receiving the written request.

F. Certification Duration

Once OMWESB certifies a firm as an eligible DBE, it shall remain certified unless and until its certification is removed. OMWESB will not require DBEs to reapply

for certification as a condition of continuing to participate in the program, but may conduct periodic certification reviews. The DBEs will have to reapply and be re-certified if their certification is removed. OMWESB will update the DBE Database regularly with new certification actions.

(1) Notification of Change in Circumstances

During a DBE firm's certification period, it must inform OMWESB, in writing, of any changes in circumstances affecting the firm's ability to meet disadvantaged status, business size, ownership, control requirements, or any material change in the information provided in the certification application process, and attach supporting documentation describing in detail the nature of such changes. Such notice of change from the DBE firm must take the form of an unsworn declaration executed under penalty of perjury. The written notification shall be provided by the DBE within thirty (30) days of occurrence of the change(s). If the DBE fails to make timely notification of such changes, it will be deemed to have failed to cooperate under the regulations.

(2) Annual Affidavit of Continuing Eligibility

Every firm certified by OMWESB as a DBE must provide to OMWESB every year on the anniversary of the date of its initial certification, an affidavit sworn to by the firm's owner(s) before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of the Regulations or any material changes to the information provided in its original application, or the last notification of a change circumstance. The affidavit shall specifically affirm that the DBE continues to meet SBA size criteria and the overall gross receipt cap, documenting this affirmation with supporting documentation of the DBE size and gross receipts. If the DBE fails to provide this information in a timely manner, it will be deemed to have failed to cooperate with the requirements of the regulations.

G. Denials and Reapplication Procedures

If a firm is denied certification, it will be required to wait at least twelve (12) months before it may reapply for DBE certification with OMWESB. The time period for reapplication begins to run on the date the explanation for denial of certification is received by the applicant firm. The firm may file an appeal for any denial of certification to USDOT in accordance with section 6.4.9 of this document.

H. Removal Procedures (De-certification/Denial)

A DBE firm which no longer meets the eligibility standards (or misrepresented information during the certification process) will be removed from the DBE program by having its certification removed. A firm shall remain certified during the removal process.

(1) Initiating Removal

(a) Any person may file a written complaint that alleges a currently certified firm is ineligible. A written complaint must specify reasons for the allegation and include any information or

arguments supporting the allegation. A general allegation or anonymous complaint will not be accepted. The Manager of OMWESB will review the complaint, all certification records and other available information in order to determine whether there is reasonable cause to believe that the firm is ineligible.

- (b) Authority-Initiated Proceedings - The Manager of OMWESB will review all notifications of change in circumstance or other information that comes to OMWESB's attention, including notification of removal actions of other USDOT recipients, to determine whether there is reasonable cause to believe a currently certified firm is ineligible. When the OMWESB determines that a firm is not eligible for certification, the OMWESB will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant firm upon request.
- (c) USDOT Directive to Initiate Proceeding - A USDOT agency may direct ODOT to initiate removal proceedings, because it has determined the information in the certification records or other information available provides reasonable cause to believe that a firm is ineligible. The USDOT agency must provide ODOT and the firm a notice setting forth reasons for the directive, including relevant documentation.
- (d) Reasonable Cause to Believe a Firm is Ineligible - If the Manager of OMWESB determines that there is not reasonable cause to believe the that firm fails to meet eligibility requirements, s/he shall provide a written notice to the firm and the complainant stating the reasons therefore in such cases where a complaint was filed with OMWESB.
- (e) A DBE may be decertified at any time if the Manager of OMWESB determines that there is reasonable cause to believe the firm no longer meets the eligibility standards set out in 49 CFR 26 Subpart D and OAR 445-050-0020. The OMWESB may also deny certification to any DBE applicant that does not meet eligibility standards set out in 49 CFR 26 Subpart D and OAR 445-050-0020. The following steps shall be taken:
 - (i) Written Notice - In the case of de-certification, the OMWESB shall issue a Notice of Intent to Decertify the DBE 21 days prior to the date of the de-certification, and indicate the specific reasons for the de-certification. In the case of denial of initial certification or re-certification, the DBE or applicant will be notified in writing of the denial and the reasons therefore. The notice shall also include notification that the firm has the right to a contested case hearing.
 - (ii) (b) Contested Case Hearing - In either a de-certification or denial of initial certification or re-certification of a DBE, the DBE or applicant has 21 calendar days from the date of the Notice of Intent to Decertify or the letter of denial in which to submit a written request for contested case hearing. If the DBE or applicant requests a contested case hearing, the de-certification or denial of re-certification will

be stayed pending the issuance of a final order. Contested case hearings will be conducted in accordance with ORS 183.310 to 183.550 and OAR 445-050-0000. If no written request for a contested case hearing is received by the OMWESB within the 21-day period, the de-certification/denial will be final.

- (iii) Decision - Following the contested case hearing, the proposed order issued by the hearings officer will be forwarded to the manager of the OMWESB for issuance of the final order.
- (iv) Notice of Decision - The OMWESB will provide the firm written notice of the final decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. Any applicant or DBE that believes it has been wrongly de-certified or denied certification or re-certification by the OMWESB may also file an appeal in writing, signed and dated, with the USDOT in accordance with section 6.4.9 of this document. OMWESB will send copies of the notice to the complainant in an ineligibility complaint or the concerned USDOT agency that directed ODOT to initiate the proceeding.
- (v) Effects of Removal of Eligibility. - The OMWESB and ODOT OCR will take the following actions upon the removal of a firm's certification:
 1. OMWESB will update the DBE Database and notify ODOT OCR of the removal.
 2. ODOT OCR will determine whether the decertified firm is currently participating in an ODOT contract or has been included in a recent bid;
 3. If a contract that has not been executed before the removal notice involves a commitment by the prime contractor to use the ineligible firm or by ODOT to use the ineligible firm as a DBE prime contractor, the ineligible firm cannot be counted toward the contract goal or the overall annual goal. The Regulations require that ODOT direct a prime contractor to meet the contract goal with another eligible DBE subcontractor or to demonstrate that it has made sufficient good faith efforts to do so;
 4. If a subcontract has been executed by a prime contractor or a prime contract has been executed by ODOT with the ineligible firm before the removal notice, the prime contractor or ODOT may continue to use the firm on the contract and may continue to count the firm's participation toward the contract goal. ODOT shall not count that portion of the ineligible firm's performance remaining on the contract or subcontract after the removal notice toward the overall annual goals; and
 5. If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, ODOT will continue to

count its participation on that contract toward overall and contract goals.

I. Certification Appeal to USDOT

A firm that has been denied certification or whose eligibility is removed may make an administrative appeal to the USDOT. A complainant in an ineligibility complaint to the OMWESB may appeal to USDOT if OMWESB does not find reasonable cause to propose removing the firm's eligibility. Pending the USDOT appeal decision, OMWESB's decision shall remain in effect. All Appeals shall be sent to:

U.S. Department of Transportation
Office of Civil Rights
400 Seventh Street, SW
Room 2401
Washington, D.C. 20590

All requests for an appeal must be sent, in writing, within ninety (90) days of OMWESB's final decision on the matter. The USDOT may accept an appeal filed later than 90 days after the date of the decision if it determines that there was good cause for the late filing of the appeal. The appeal request shall include information and arguments regarding why the decision should be reversed. If the appeal is from a firm, the request must include information regarding certification with other USDOT recipients. If the appeal is from a third party; the party will be requested to provide the same information.

The manager shall provide a copy of a complete, well-organized administrative record within twenty (20) days of a request from USDOT. USDOT will make its decision based solely on the entire administrative record without conducting a hearing. The firm and complainants shall have access to any information reviewed by USDOT in accordance with public records and privacy laws.

USDOT will affirm OMWESB's decision if it determines based on the entire administrative record, that the decision is supported by substantial evidence or is consistent with the substantive or procedural provisions concerning certification. USDOT shall send written notification of its decision including the reasons therefore to OMWESB, the firm and any complainant. If OMWESB's decision is reversed, the manager will take all appropriate actions to conform with the USDOT's decision immediately upon receiving the written notice. USDOT decisions are administratively final, and are not subject to petitions for reconsideration.

J. ODOT Commodity Code/North American Industry Codes (NAICS)

During the certification process for firms indicating a desire to participate in federal aid highway or FTA-funded contracts, a DBE will be assigned a commodity/NAICS code by OMWESB which is indicative of the type of work the firm has shown that it can perform at the time the certification is requested. ODOT uses the commodity/NAICS codes in its process of evaluating projects to identify work which may be accomplished by DBEs.