

Chapter 4: SUBPART D – DBE CERTIFICATION APPLICATION AND STANDARDS

Section 1: Burdens of Proof

Firms seeking certification have the burden of demonstrating to CDOT, by a preponderance of the evidence, that the firm and/or its owners meet the requirements of 49 CFR 26, Subpart D concerning group membership, individual disadvantage, business size, ownership, and control.

When an individual submits a signed, notarized statement that he or she is a member of one of the groups in 49 CFR 26.67(a), CDOT will rebuttably presume that such individual is socially and economically disadvantaged. However, applicants do have the obligation to provide CDOT with information concerning their economic disadvantage. Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to CDOT, by a preponderance of the evidence, that they are socially and economically disadvantaged.

CDOT will make determinations concerning whether individuals and firms have met their burden of demonstrating ownership, control, and social and economic disadvantage by considering all the facts in the record, viewed as a whole.

Ref: 49 CFR 26.61

Section 2: Group Membership

If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group, CDOT has a well-founded reason to question the individual's claim of membership in that group, CDOT will require the individual to present additional evidence that he or she is a member of the group. CDOT will provide the individual a written explanation of its reasons for questioning his or her group membership and a written request for additional evidence. In implementing this section, CDOT will take special care to ensure that it does not impose a disproportionate burden on members of any particular designated group.

In determining a group membership classification, CDOT will consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. CDOT may require the applicant to produce appropriate documentation of group membership.

If CDOT determines that an applicant claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the applicant will be required to demonstrate social and economic disadvantage on an individual basis. CDOT's decisions concerning membership are subject to appeal.

Ref: 49 CFR 26.63

Section 3: Business Size Determinations

To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. CDOT applies current SBA business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT assisted

contracts, including the primary industry of the applicant. Even if a firm meets the SBA size standards, it shall not be an eligible DBE if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$23.98 million, or the current threshold as determined by USDOT.

Ref: 49 CFR 26.65

Section 4: Determination of Social and Economic Disadvantage

CDOT rebuttably presumes that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals provided that the applicant has submitted a notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

CDOT requires each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million. This certification must be supported with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, CDOT uses the DOT personal net worth form which is available at [\[link\]](#). Where necessary to accurately determine an individual's personal net worth, CDOT may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). However, such requests for additional information shall not be unduly burdensome or intrusive.

Notwithstanding any provision of Federal or State law, CDOT will not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. CDOT will transmit this information to DOT in any certification appeal proceeding under 49 CFR 26.89 or to any other State to which the individual's firm has applied for interstate certification.

In determining an individual's net worth, CDOT:

- a. Excludes the individual's ownership interest in the applicant firm;
- b. Excludes the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. CDOT includes home equity loan balances in the equity calculation and not as a separate liability on the individual's personal net worth form;
- c. Does not use contingent liabilities to reduce an individual's net worth; and
- d. With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, includes only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

CDOT attributes to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of CDOT's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support. However, CDOT does not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

An individual's presumption of economic disadvantage may be rebutted if the statement of personal net worth and supporting documentation shows that the individual's personal net worth exceeds \$1.32 million. CDOT is not required to have a proceeding in order to rebut the presumption of economic disadvantage in this case.

An individual's presumption of economic disadvantage may also be rebutted if the statement of personal net worth and supporting documentation demonstrates that the individual is able to accumulate substantial wealth. In making this determination, as a certifying agency, CDOT may consider factors that include, but are not limited to:

- a. Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;
- b. Whether the income was unusual and not likely to occur in the future;
- c. Whether the earnings were offset by losses;
- d. Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
- e. Other evidence that income is not indicative of lack of economic disadvantage; and
- f. Whether the total fair market value of the owner's assets exceed \$6 million.

The exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes. CDOT must have a proceeding in order to rebut the presumption of economic disadvantage when the \$1.32 million threshold has not been met but the individuals otherwise demonstrates an ability to accumulate substantial wealth. .

If CDOT has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged CDOT may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. CDOT's proceeding follow the procedures of 49 CFR 26.87. CDOT has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. CDOT may require the individual to produce information relevant to the determination of his or her disadvantage.

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

regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. CDOT must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to CDOT, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, CDOT uses the guidance found in Appendix E of 49 CFR part 26. CDOT requires that applicants provide sufficient information to permit determinations under the guidance of Appendix E of 49 CFR part 26.

Ref: 49 CFR 26.67

Section 5: Determination of Ownership

In determining whether the socially and economically disadvantaged participants in a firm own the firm, CDOT will consider all the facts in the record, viewed as a whole.

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 the 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. Such ownership 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 ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if –

- a. The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
- b. The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions

include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

in situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership the owner's expertise must be in a specialized field, of outstanding quality, in areas critical to the firm's operations, indispensable to the firm's potential success, specific to the type of work the firm performs and documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm. Additionally, the individual whose expertise is relied upon must have a significant financial investment in the firm.

CDOT will always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by a socially and economically disadvantaged individual:

- a. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
- b. Through inheritance, or otherwise because of the death of the former owner.

CDOT will presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non disadvantaged individual or non DBE firm who is involved in the same firm for which the individual is seeking certification, or an affiliate of that firm, involved in the same or a similar line of business, or engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to CDOT, by clear and convincing evidence, that the gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE and the disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non disadvantaged individual who provided the gift or transfer.

When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, CDOT will deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. CDOT does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

CDOT may consider the following factors in determining the ownership of a firm. However, CDOT will not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

- a. A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph 8 of this section;
- b. There is a provision for the co signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
- c. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, CDOT will give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

Ref: 49 CFR 26.69

Section 6: Determination of Control

In determining whether socially and economically disadvantaged owners control a firm, CDOT will consider all the facts in the record, viewed as a whole.

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, CDOT will scrutinize relationships with non DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. CDOT will consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non DBE firms or persons associated with non DBE firms compromise the independence of the potential DBE firm. CDOT will examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm. CDOT 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. There can be no restrictions through corporate charter provisions, by law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co signature on documents as provided for in 49 CFR 26.69(j)(2).

The socially and 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. A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president). In a corporation, disadvantaged owners must control the board of directors. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the CDOT can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, CDOT will not deny certification solely on the ground that the person lacks the license or credential. However, CDOT may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

CDOT may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. CDOT may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

In a case where a non disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, CDOT may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part time work in a full time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, CDOT will make a judgment about the control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as CDOT does in other situations, without regard to whether or not the other persons are immediate family members. If CDOT cannot determine that the socially and economically disadvantaged owners (as distinct from the family as a whole) control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

Where a firm was formerly owned and/or controlled by a non disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to CDOT, by clear and convincing evidence, that the transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE and the disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non disadvantaged individual who formerly owned and/or controlled the firm.

In determining whether a firm is controlled by its socially and economically disadvantaged owners, CDOT may consider whether the firm owns equipment necessary to perform its work. However, CDOT will not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

CDOT will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to CDOT only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. CDOT may not, in this situation, require that the firm be recertified or submit a new application for certification, but CDOT will verify the disadvantaged owner's control of the firm in the additional type of work. The types of work a firm can perform (whether on initial certification or when a new type of work is added) shall be described via work codes that include the most specific available NAICS code for that type of work with an additional Census index descriptor.

Firms and CDOT must check carefully to make sure that the work codes are kept up-to-date and accurately reflect work which the CDOT has determined the firm's owners can control. The firm bears the burden of providing detailed company information CDOT needs to make an appropriate work code designation. If a firm believes that there is not a work code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that CDOT, in its certification

documentation, supplement the assigned code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and CDOT will rely on such a description in determining whether a firm's participation can be counted toward DBE goals. CDOT is not precluded from changing a certification classification or description if there is a factual basis in the record. However, CDOT will not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, CDOT will generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

Ref: 49 CFR 26.71

Section 7: Other Rules Affecting Certification

Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (2) of this section, CDOT will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

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

CDOT evaluates the eligibility of a firm on the basis of present circumstances. CDOT will not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

CDOT will not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of 49 CFR Part 26, the firm is eligible for certification.

DBE firms and firms seeking DBE certification shall cooperate fully with CDOT requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

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.

An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, 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. If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, CDOT may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company. CDOT may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals.

Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

CDOT will not require a DBE firm to be prequalified as a condition for certification unless CDOT requires all firms that participate in its contracts and subcontracts to be prequalified.

A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in 49 CFR 26.71.

In regards to Alaska Native Corporations (ANCs), notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

- a. The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
- b. The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

- c. The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

As a recipient to whom an ANC-related entity applies for certification, CDOT will not use the USDOT uniform application form. CDOT will obtain from the firm documentation sufficient to demonstrate that entity meets the requirements. If an ANC-related firm does not meet all the conditions above, then it must meet the same requirements as firms owned by Indian Tribes or Native Hawaiian Organizations.

Ref: 49 CFR 26.73