

CONTRACTOR AND CONSULTANT **FREQUENTLY ASKED QUESTIONS**

Question 1

Is there a deadline for MaineDOT to re-evaluate and recertify or decertify current DBEs?

Answer 1

There is no specific deadline in the new rule, but the rule does provide for the re-evaluation process to be completed "as quickly as practicable." The new rule requires that MaineDOT notify USDOT when it has completed the re-evaluation process for all current DBEs.

Question 2

When does MaineDOT expect to begin the DBE re-evaluation process under the new criteria set out in the rule?

Answer 2

Because the new rule was published only on October 3rd and was made effective on that same date, there is as yet little guidance on many aspects of the rule. We are hopeful that in the next few weeks, some guidance will become available, though the federal government shutdown could affect that timing. In the meantime, however, we are continuing to spend considerable time familiarizing ourselves with the requirements of the new rule, including the new re-evaluation criteria that need to be met to show social and economic disadvantage unrelated to race, ethnicity, or sex.

Question 3

What will a current DBE need to show in the re-evaluation process to be recertified as a DBE?

Answer 3

A DBE will be required to demonstrate social and economic disadvantage (SED) based on its own experiences and circumstances without relying on race, ethnicity, or sex. The new rule sets out the following criteria:

(1) To satisfy the SED requirement and ensure all determinations of disadvantage are not based in whole or in part on race, ethnicity, or sex, an owner must provide to MaineDOT a Personal Narrative (PN) that establishes the existence of disadvantage by a "preponderance of the evidence" based on individualized proof regarding specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to similarly situated, non-disadvantaged persons.

(2) The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and must establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.

(3) The owner must attach to the PN a current personal net worth statement and any other financial information the owner considers relevant.

"Preponderance of the evidence" generally means that the information provided by the DBE is more likely true (i.e., a greater than 50 percent likelihood) than not.

Question 4

How will the re-evaluation process affect ongoing contracts that include DBE participation?

Answer 4

While existing contracts will remain in place during the re-evaluation process, all reporting requirements tied to DBE goals and all compliance monitoring to ensure that work subcontracted to DBEs is performed by those DBEs will be suspended until the re-evaluation process has been completed for all current DBEs. To that end, we will temporarily discontinue Commercially Useful Function (CUF) monitoring on existing projects unless we receive contrary information from USDOT. Until the re-evaluation process has been completed, MaineDOT also is not allowed to count DBE participation toward existing goals (i.e., DBE goals will not be enforced) or to set new DBE contract goals on new projects. We do not yet know whether USDOT will issue additional guidance on these matters.

Question 5

Does the new rule change the requirement for contractors to provide a bidders list?

Answer 5

The requirement to provide a bidders list remains, but there is no longer any requirement to include information about race or sex for DBEs who bid on federally-funded MaineDOT contracts. The removal of these demographic fields from bidder list reporting will reduce the administrative burden of data entry for contractors. We will revise our bidder list form to make this change and distribute it.

Question 6

What effect does the new rule have on new MaineDOT contracts?

Answer 6

Until the re-evaluation process for all current DBEs has been completed, MaineDOT must set a zero percent DBE participation attainment target (PAT) on each new contract. Under USDOT's new rule, goals/targets cannot be set until all existing DBEs are re-evaluated under the new criteria established for a finding of social and economic disadvantage and are either recertified or decertified.