

DBE FREQUENTLY ASKED QUESTIONS

Question 1

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

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 and ACDBEs.

Question 2

When does MaineDOT expect to begin the DBE and ACDBE 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. A better understanding of these criteria and how they are intended to be applied will help us develop an application form for the re-evaluation process. Once we have prepared an application, we will send you the application along with instructions and timelines for the DBE re-evaluation process.

Question 3

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

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/ACDBE is more likely true (i.e., a greater than 50 percent likelihood) than not.

Question 4

What should current DBEs do now to prepare for the re-evaluation process?

Answer 4

As a starting place, DBEs should become familiar with the new certification standards set out in Answer 3 above and should begin preparing for the re-evaluation process.

As noted, the new standards require DBEs and ACDBEs to establish social and economic disadvantage through specific, individualized proof of barriers experienced by the firm's owner. General statements or demographic references will not suffice.

To support their case, DBEs should develop narratives showing concrete, verifiable examples demonstrating disadvantage. Examples could include, where applicable, instances of difficulty obtaining financing, bonding, or insurance on terms available to similarly situated firms; barriers to entry or advancement in the relevant industry or market; or obstacles or disparities encountered in education, employment, or business growth. Documentation supporting these narratives, such as loan, bond, or insurance denials or the denial of bidding opportunities should be included when available.