

My Application For DBE Certification Was Denied- Now What?

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Has your business applied for certification as a Disadvantaged Business Enterprise (DBE) through your state Department of Transportation (or local agency administering the state's certification program)? Are you wondering what to do if the agency denies your application? This blog post will discuss the appeal process.

Members of socially and economically disadvantaged groups can apply for DBE certification in accordance with 49 C.F.R. Part 26. Under these regulations, members of eligible groups include women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans and Subcontinent Asian Americans.

In Pennsylvania, this process runs through the Pennsylvania Unified Certification Program (PAUCP). Certification through the DBE program allows a company to participate on any Federal Aviation Administration, Federal Highway Administration and Federal Transit Administration funded contracts as a DBE. You may also have access to further opportunities in government and public contracts and subcontracts.

As explained in my prior blog post, applying for certification as a DBE, Minority Business Enterprise or Women Business Enterprise is a difficult and time-consuming process. Understandably, receiving a denial of your company's request for certification can lead to a lot of frustration. However, there are several options to attempt to overcome a denial.

I certainly recommend contacting a knowledgeable attorney to help you with the process. An attorney experienced in this area can help you evaluate your chances of success on appeal, help you navigate the red tape and regulations that must be considered, and present the best possible case for your certification.

If your application for DBE status is denied, the agency to whom you submitted your application must provide you with a written explanation as to why it denied your application, and must reference specific information in the record that supports the reasons for the denial. The agency must also make available upon request all of the information that it used in arriving at its decision. You may reapply for certification in the future (there is usually a waiting period of 12 months).

If you disagree with the denial, you can appeal to your state-level certification program (if one exists). In Pennsylvania, the Pennsylvania Unified Certification Program has an Appeals Committee that will schedule a hearing to hear your appeal. At that hearing, you will have the opportunity to respond to the reasons set forth in the agency's denial letter. There is no prohibition on having an attorney present, and, in fact, you may find it helpful. You can present evidence and testimony.

You can also choose to skip this step and appeal directly to the United States Department of Transportation. You may also appeal a denial from the state level to the USDOT.

You must submit your appeal to the USDOT within 90 days. All relevant information must be contained in your letter lodging the appeal and you must include all documentation you wish the USDOT to consider. You should be as detailed as possible, as there will not be a hearing because the decision is made solely on the record.

The USDOT can then decide to uphold the denial, or it may find that the denial was not supported by substantial evidence or was inconsistent with the regulations regarding certification. If your appeal is successful, the USDOT will direct the state to certify you. Please note that the decision is final, and you cannot ask the USDOT to reconsider a decision. You

may be able to appeal a denial of the certification to a federal court, but that will be a long and expensive process.

If your business is applying for certification or has received a denial, please contact me for a consultation so that you will know your options.

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