

When Is My Disadvantaged Business Enterprise (DBE) No Longer Disadvantaged?

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If you are a woman or minority owned business (WBE or MBE) you may have also been certified as a Disadvantaged Business Enterprise (DBE) through your state Department of Transportation (or local agency administering the state's certification program). This is a great way to boost your business as DOT-funded projects as there are usually requirements and/or goals to include a certain percentage of DBE work in the projects.

However, it **is** possible that at some point, you may no longer be considered a DBE, regardless of your sex or minority status. This idea is troubling for many businesses, as they have built up their business and reputation as a DBE. On the other hand, in order to lose your DBE certification, the minority owner and the company have usually grown significantly since they first obtained DBE certification.

While members of the classes eligible for DBE certification are presumed to be disadvantaged, that disadvantage can be rebutted, with guidance provided b 49 C.F.R. §26.67:

- If your statement of personal net worth and supporting documentation show your personal net worth exceeds \$1.32 million.
- If your statement of personal net worth and supporting documentation show you are "able to accumulate substantial wealth." The agency may consider:
 - Whether the average adjusted gross income of the owner over the past three years was more than \$350,000;
 - Whether the income was unusual and not likely to occur in the future;
 - Whether the earnings were offset by losses;
 - Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
 - Other evidence that income is not indicative of lack of economic disadvantage; and
 - Whether the total fair market value of the owner's assets exceed \$6 million.

They will also look at transfers that the owner has made during the previous two years to immediate family members, trusts (where the beneficiary is an immediate family member) or to the firm for less than fair market value (aside from customary gifts for thing such as birthdays, weddings, graduation, etc.).

If you are given notice or inquiries by your certifying agency that they are reviewing matters involving your disadvantaged status, you should consider engaging a knowledgeable attorney to help you with the process. An attorney can help you understand the process and what information you need to present to remain a DBE, and assist with the hearing. You are entitled to a hearing regarding the rebuttal of the presumption of economic disadvantage under 49 C.F.R. §26.67.

Please contact me if you are concerned with your firm's status as a disadvantaged business enterprise.

Danielle Dietrich is an attorney at Tucker Arensberg that assists business owners with their legal needs. She is licensed to practice law in Pennsylvania, Ohio and West Virginia. Danielle can be reached via email, telephone: 412-594-5605 or on Twitter at @DLDietrich.