

**Sec. 13a-165-4. DBE eligibility criteria**

(a) In determining whether a person, firm or corporation is eligible for certification as a DBE, the Department of Transportation shall use the following criteria:

(1) The applicant must be a small business concern as defined in section 13a-165-2 (o);

(2) The small business concern must be owned and controlled by one or more minorities, as defined in section 13a-165-2 (k), or women, and the minority member(s) or women in question must be economically and socially disadvantaged;

(3) Bona fide minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by that particular minority community. However, the Department is not required to accept this claim if it determines the claim to be invalid;

(4) An eligible disadvantaged business enterprise under these regulations shall be an independent business. The ownership and control by minorities or women shall be real, substantial and continuing, and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. The minority or women owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements. In determining whether a potential DBE is an independent business, the Department shall consider all relevant factors, including the date the business was established, the adequacy of its resources for contract work, and the degree to which financial, equipment leasing and other relationships with non-minority businesses vary from industry practice;

(5) The minority or women owners shall also possess the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy and operations. The business shall not be subject to any formal or informal restrictions, not customary, which limit the discretion of the minority or women owners; and,

(6) The contributions of capital or expertise by the minority or women owners to acquire their interests in the business shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the business or its non-minority owners, or the mere participation as an employee, rather than as a manager.

(b) In addition to the above criteria, the applicant must (1) satisfy the eligibility standards set forth in 49 CFR Part 23 and (2) be prequalified by the Department.

(Effective January 4, 1990)