

DBE and ACDBE Certification

Avoiding the Pitfalls



DBE Certification Pitfalls

I. General *Good* Advice

- Be honest – 1 misrepresentation = suspicion of entire package
- Document everything
- Communicate in writing
- Review your package to make sure it is totally complete before submission
- 90-day processing requirement does not kick in until all information is received



DBE Certification Pitfalls

I. General *Good* Advice

- Certification involves a lot of paper work. It can be a daunting task. Make sure your package is:
 - Complete
 - Organized
 - Accurate
- Anticipate questions and answer them before they are asked



II. Certification - Ownership

- Gifts
- Relying on expertise
- Revocable and Irrevocable living trusts
- ESTATE PLANNING—will it work for me in the DBE/ACDBE Program?
- Tax Consequences: Structure may be beneficial to the bottom line, but may change your customary incidents of ownership or control

II. Certification - Control

- Independence
- Restrictions on control
- Management
 - Disadvantaged owner holds highest officer position or general partner
 - Disadvantaged owner controls board or partnership

- The disadvantaged owner must control the day-to-day management, either personally or through personnel hired and supervised by the disadvantaged owner. The disadvantaged owner must retain the ability to exercise control over the firm's operations, management, and policy.
- Mere performance of administrative duties **IS NOT** supervision of daily operations

- Certifying agencies will look closely at:
 - Experience
 - Other employment
 - Licensing
 - Family run businesses
 - Ability to operate
 - Franchises

II. Certification - PNW

- Personal Financial Statement (\$750,000 cap)
 - Tax returns will be reviewed in comparison to PNW
 - Copies of loan documents, trusts, explanations for business valuations, etc., may be requested, if questionable
 - Burden of proof is on the applicant
 - Explain (in writing) complicated or confusing items
 - Dealing with trusts
 - Dealing with company valuations
 - Shielding assets (Don't Do It!)
 - Rules for exclusion of up to \$3 million for ACDBE firms

II. Certification - Other issues

- New companies
 - Experience
 - Ability to operate
- Joint venture partners
 - Independence
 - Affiliation
- Misrepresentation of Social & Economic Status
- False statements
- Undisclosed co-mingling of assets or financial arrangements

- Undue influence or reliance on accounting firms or franchisor
- Assessing rental values for equipment owned by the prime concessionaire
- Selling ownership interest to a socially and economically disadvantaged individual for an insubstantial amount not proportionate to their ownership interest.

II. On-site Review

- Be prepared
- Be honest
- Answer all questions

II. On-site – Considerations/Issues

- DBE Firms Must Keep a Regular Workforce
- DBE Firms Can not "Share" Employees With Non-DBE Contractors, Particularly the Prime Contractor or Subsidiary
- DBE Firm Responsible for All Payroll and Labor Compliance Requirements for All Employees Within the Control of the Company
- Direct or Indirect Payments by Any Other Contractor Will Not Be Allowed

- Movement of Employees Between Contractors
- Employee Paid by DBE and Prime
- Employee Working for Prime in Morning and DBE in Afternoon

III. Other Issues

- High Insurance Requirements
- Lack of follow-through and compliance
- Restructuring after certification
- Prime concessionaire operates ACDBE concession on a day-today basis.
- Requirements to sell to another ACDBE

QUESTIONS?

