



Here's Why You Should Be Certified

by Anna M. Carno, Carno Law Group

With the recent enactment of the Infrastructure Investment and Jobs Act newfound hope was formed that thousands of jobs will be created, and millions of dollars will be spent, on improving our nation's infrastructure. As a result, there has been a resurgence of interest and commitment in certification programs, often referred to as DBE programs. The following is a brief introduction to the:

- Purpose of Certification Programs;
- History Behind Certification;
- Description of the differing types of certifications;
- Criteria to get certified; and
- Benefits of certification.

Purpose of Certification Programs

Certification programs were designed to increase the participation of Disadvantaged Business Enterprises ("DBEs") in industries in which they have been historically underrepresented and discriminated against. By imposing quotas or minimum percentage participation requirements on projects funded by the government, the hope was to provide socially and economically disadvantaged individuals a means to grow and prosper.

Certification is a review process that ensures a small business is actually owned, controlled, and operated by the applicant. The certification process is administered by a certifying agency, which is generally a government agency or a private organization. The certification process takes time. The application

requirements are very stringent and must be met completely.

History Behind Certification

Certification programs were initiated by the Federal Government. In 1983, Congress enacted the first Disadvantaged Business Enterprise (DBE) statutory provision. This provision required the Department of Transportation (DOT) to ensure that at least 10% of the funds authorized for the highway and transit Federal financial assistance programs be expended with DBEs. In 1987, Congress re-amended the statutory DBE program to add, among other changes, women to the groups presumed to be disadvantaged. Since 1987, DOT has established a single DBE goal, encompassing both firms owned by women and minority group members. Since the U.S. Department of Transportation has required that a Unified Certification Program (UCP) be put into practice by each state, each State has now adopted and implemented its own DBE program.

What Types of Certifications Are There?

The types of certifications include:

- MBE - Minority Business Enterprise
- WBE - Woman Business Enterprise
- SBE - Small Business Enterprise
- VBE - Veteran Business Enterprise
- DVBE - Disabled Veteran Business Enterprise
- UDBE - Underutilized Disadvantaged Business Enterprise

If the business enterprise meets the requisite qualifications, it may earn

multiple certifications. For example, a female Hispanic who served in the military and owns 51% of the company and manages it, may qualify for WBE, MBE and VBE certification.

What Are the Criteria to Get Certified?

1. Social and Economic Disadvantage:

The applicant must be a U.S. Citizen (or resident alien) and meet the Federal definition of socially and economically disadvantaged as defined in 49 CFR, Part 26.67. Presumptive groups include women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian-Americans, or other minorities found to be disadvantaged by the regulations, or any individual found to be socially and economically disadvantaged on a case-by-case basis.

2. Personal Net Worth:

The applicant must have a personal net worth (PNW) of less than \$1,320,000. The individual's ownership interest in the applicant's firm, and his/her equity in their primary residence are not included in the calculation of the \$1,320,000.

3. Business Size Standard:

The applicant must be a small business as defined by the Small Business Administration (SBA). The company (including affiliates) must not have annual gross receipts over \$26,290,000 in the previous three fiscal years (\$56,420,000 for airport concessions, in general, with some exceptions). (Depending on the type of work the business performs, other lower size standards may apply.)

4. Ownership:

The applicant must be a for-profit small business where socially and economically disadvantaged individuals own at least 51 percent interest and control management and daily business operations.

5. Independence:

The applicant must not be affiliated with another firm in such a way as to compromise its independence and control. These include, but are not limited to, such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. In other words, the business should be operational on its own, without support beyond what is applicable under normal industry standards.

6. Management and Control:

The socially and economically DBE owner(s) must possess the power to direct (or cause the direction of) the management and policies of the firm and to make day-to-day decisions, as well as long-term decisions on matters of management, policy and operations. Often, where state law requires the owner to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged person(s) who own and control the business entity must possess the required license or credential.

What Are the Benefits of Certification?

According to owners of certified companies, the following are only a few of the benefits that they have experienced:

- Access to loans – especially from the SBA. Financial institutions have created special lending programs designed for certified companies.
- Inclusion in databases utilized by major companies and the government in their search for services or products you provide.
- Access to Networking opportunities. Certified

companies are invited to events and conferences which provide valuable face time with potential purchasers leading to an awareness of your brand, an opportunity to develop relationships with potential customers and an increased likelihood of obtaining contracts.

- Access to educational opportunities and training: Various organizations provide educational opportunities and special training all with the mindset of helping you grow your business. For example, NMBOC holds an annual event called Decades of Excellence where workshops are held to discuss strategies for selling to large companies, the best methods to market your business and where to obtain financial assistance. WBENC and NMSDC also offer advanced management training programs to certified companies.
- Exposure to both the public and private sector.
- Expands opportunities to participate in federally funded projects.
- Allows you to be accessible to prime contractors needing to fulfill DBE participation goal requirements.
- Allows you to be eligible for mentor protégé opportunities such as Caltrans' Cal Mentor programs.
- Adds credibility to your business while setting your unique product or service apart from the rest.

Where Can You Go to Get Certified?

Since multiple public agencies allow you to apply online, you do not need to hire an outside source to prepare your application, however, for the same reasons you would hire an accountant to prepare your tax returns and an attorney to represent you in court, it is highly recommended that you enlist the services of company,

and preferably, a law firm, to assist you in the application process.

How Long Does the Application Process Take?

There are multiple factors that impact the duration of the application process, but the primary ones include: Which agency is reviewing your application and how long will it take you to collect the required information.

Why Certified Companies Will Be Used, and Sought After, for Years to Come.

The support and interest in certification programs have grown every year since they have been created. More importantly, the goals established by the various governmental entities who mandate certified company's participation continue to grow without any indication that the applicable percentages will decrease. For example, Caltrans established an overall annual goal of 17.6 percent DBE participation for 2019-2021. Metro proposed an overall DBE goal of 27.0% for the same time period. The Department of Transportation's goal for 2021 was 30.07% for Prime Contracts and 45.25% for certain Subcontractors. Clearly, the desire, and need, to hire certified companies is now ingrained in the means and methods of doing business in the construction industry.

About the Author

Anna M. Carno, is President of Carno Law Group, A Professional Law Corporation. She has assisted many companies apply for certification status as well as defended companies whose certification status was questioned. Her law firm has developed a niche practice to help business entities regarding all their certification needs. She can be contacted via her law firm website: www.CarnoLaw.com.