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# Independence Required for Disadvantaged Business Enterprise Certification

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Disadvantaged Business Enterprise (DBE) certification provides access to additional opportunities for qualifying businesses. To qualify, the majority owner(s) must be both socially and economically disadvantaged. This blog will focus on independence – a required element for a business to obtain DBE certification.

## What does it mean to be an independent business?

In the DBE context, an independent business is one whose viability does not depend on a relationship with another firm or firms. 49 C.F.R. § 26.71(b) sets forth the requirement that only independent businesses can be certified.

## What do DBE certifiers look at when determining independence?

Under the regulations, the certifiers look at:

- Relationships with non-DBE firms, in areas such as:
    - Personnel
    - Facilities
    - Equipment
    - Financial support
    - Bonding support
    - Other resources
- Whether present or recent employer/employee relationships between the owners of the potential DBE and non-DBE firms compromise the independence of the potential DBE firm.

- The applicant firm’s relationships with prime contractors to determine whether there is a pattern of exclusive or primary dealings with a prime contractor (i.e. all of the applicant firm’s work is from one prime contractor).
- Consistency of relationships between the potential DBE and non-DBE firm within the customs of normal industry practice.

## What are some examples of businesses that are not independent?

The United States Department of Transportation has found numerous businesses not independent within the regulations. A few examples:

- When the only contract of the business is with the owner’s father’s (non-DBE) business, and the presumed disadvantaged owner worked more hours for her father’s business than her applicant business, the applicant firm was not independent. In re Emby &Co. LLC, No. 20-088, September 21, 2020.
- When the applicant business shared personnel and facilities with a business owned by the non-disadvantaged husband’s business, and the applicant firm subcontracted work to the owner’s father’s non-DBE business in the same line of work, the applicant business was not independent. In re Natalie Hansen’s Puddle Trucks, LLC, No. 15-00710, December 14, 2015.
- When the applicant firm had a relationship with a firm owned by the disadvantaged owner’s father-in-law, and the father-in-law firm owned 27% of the applicant’s equipment and the two firms were co-borrowers on numerous equipment loans, the applicant business was not disadvantaged. In re Froelich Freight, No. 20-0035, March 3, 2020.

As with all other applicant areas, the applicant business bears the burden of proof to show that it is independent and not reliant on any other firm to stay in business.



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