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DBE and ACDBE Certification for Non-Transportation Industry Businesses (09/1/2020)

When reviewing DBE and ACDBE applications, may recipients provide additional program information and advice to ACDBE and DBE applicants whose work activities appear unlikely to have any use for any DOT-assisted contracts or airport concession and concession supplier opportunities? (Sections 23.37(b), 26.1)

Yes. Certification for purposes of the DBE and ACDBE programs should be limited to eligible DBEs and ACDBEs that intend to bid on work as prime or subcontractors on DOT-assisted contracts or airport concessions contracts (including suppliers to concessionaries), respectively.¹ This includes both construction and non-construction work in the transportation industry at large. DOT funding recipients may emphasize this information to applicant firms and State and local agencies, and may make inquiries into the nature of the firm's work and what the firm seeks to achieve with certification. Recipients may recommend that a firm not pursue certification if the firm expresses that it has no intention of participating in or bidding on DOT-assisted contracts or airport concessions contracts. If a firm withdraws its application before you have issued a decision, the firm may resubmit an application at any time.²

¹ 49 CFR § 23.37(b) of the ACDBE Program Regulation states that recipients "are not required to certify a part 26 DBE as a part 23 ACDBE if the firm does not do work relevant to the airport's concessions program." 49 CFR § 23.55(k) prohibits counting "costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "build-out")." Thus, you are not required to certify firms that are participating in the build-out of a concession and not countable since they are not performing work relevant to the concession program.

² 49 CFR § 26.83(m).