

### **314.14 Contracts set aside for disadvantaged business enterprises.**

#### **1. Definitions.** As used in [this section](#):

a. “*Disadvantaged business enterprise*” means a small business concern which meets either of the following:

(1) Is at least fifty-one percent owned by one or more socially and economically disadvantaged individuals.

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

b. “*Small business concern*” means a business which is independently owned and operated and which is not dominant in its field of operation.

c. “*Socially and economically disadvantaged individuals*” means those individuals who are citizens of the United States or who are lawfully admitted permanent residents and who are African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or any other minority or individuals found to be disadvantaged by the United States small business administration. However, the department may also determine, on a case-by-case basis, that an individual who is not a member of one of the enumerated groups is socially and economically disadvantaged. A rebuttable presumption exists that individuals in the following groups are socially and economically disadvantaged:

(1) “*African Americans*” which includes persons having origins in any of the black racial groups of Africa.

(2) “*Hispanic Americans*” which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(3) “*Native Americans*” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

(4) “*Asian-Pacific Americans*” which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the United States Trust Territories of the Pacific, and the Northern Marianas.

(5) “*Asian-Indian Americans*” which includes persons whose origins are from India, Pakistan, and Bangladesh.

d. “*Prequalified*” means that the disadvantaged business enterprise is currently approved by the department as a disadvantaged business enterprise, is a recognized contractor engaged in the class of work provided for in the plans and specifications, possesses sufficient resources to complete the work, and is able to furnish a performance bond for one hundred percent of the contract.

2. *Set-aside.* Notwithstanding [section 314.1](#), there may be set aside for bidding by prequalified disadvantaged business enterprises a percentage of the total annual dollar amount of public contracts let by the department. The annual dollar amount set aside for bidding by prequalified disadvantaged business enterprises shall not exceed ten percent of the total dollar amount of federal aid highway construction contracts let by the department and federal aid transit dollars administered by the department. The director may estimate the set-aside amount at the beginning of each fiscal year and a suit shall not be brought by any party as a result of this estimate. Set-aside contracts will be awarded to the lowest responsible prequalified disadvantaged business enterprise. [This section](#) shall not be construed as limiting the department’s right to refuse any or all disadvantaged business enterprise bids.

84 Acts, ch 1229, §1; 2009 Acts, ch 41, §111, 112

This section is repealed at such time as section 105(f) of the Surface Transportation Assistance Act of 1982, Pub. L. No. 97-424, 96 Stat. 2100, expires pursuant to its own terms or by an act of Congress; 84 Acts, ch 1229, §2

Disadvantaged business enterprise funding reauthorized in Tit. 1, section 1101(b) of the 2005 SAFETEA-LU transportation reauthorization Act, approved August 10, 2005, Pub. L. No. 109-59, 119 Stat. 1156; see also 49 C.F.R. §26.43