*The Oklahoma Department of Transportation (ODOT) ensures that no person or groups of persons shall, on the grounds of race, color, sex, religion, national origin, age, disability, retaliation or genetic information, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by ODOT, its recipients, sub-recipients, and contractors.*


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http://ok.gov/odot/Doing_Business/Civil_Rights/index.html

ODOT
Oklahoma Department of Transportation

# Civil Rights Division

## Firms owned by Indian Tribes and the Disadvantaged Business Enterprise (DBE) Program

# Disadvantaged Business Enterprise (DBE) program

## MISSION

The mission of the ODOT Civil Rights Division is to ensure equal employment opportunity within ODOT, to level the playing field for Disadvantaged Business Enterprises by providing full and meaningful participation opportunities in ODOT's federally funded highway projects and to plan, implement and provide guidance to prevent discrimination in federal aid programs and activities.

## SERVICES WE PROVIDE

As a public agency, the Oklahoma Department of Transportation (ODOT) is responsible for the assurance of full and open public participation in the process of highway construction and in the receipt of benefits derived from highway construction and related activities. Through internal and external programs and activities the ODOT Civil Rights Division works to provide public services ensuring design, procurement, and contracting inclusion, community and cultural awareness, fair employment practices, and other areas where federal and state resources are applied.

**Q. Section 26.73 (h)**
**HOW DO RECIPIENTS DETERMINE THE ELIGIBLITY OF FIRMS OWNED BY AN INDIAN TRIBE?**

A. Any Indian Tribe may own a DBE firm as an entity. It is not necessary, in these cases, that disadvantaged individuals (i.e., natural persons) own the firm.

However, the firm must be controlled by socially and economically disadvantaged individuals (see 26.71). For example, suppose the CEO of a firm owned by an Indian Tribe is a non-disadvantaged white male, or that such persons effectively control the day-to-day business operations of the firm. The firm would not be an eligible DBE, because it is not controlled by socially and economically disadvantaged individuals. The disadvantaged individuals who control the firm need not necessarily be members of the Tribe that own the business. For example, the CEO of a tribally-owned business could be Hispanic.

## A Partner in Your Business Success

One implication of the control requirement is that disadvantaged individuals involved in controlling the firm must meet personal net worth (PNW) standards (see 26.67(a)(2);(b)). Not every member of the Indian Tribe has to meet these standards or complete a PNW statement. Only the disadvantaged officers, board members, CEO, etc. who actually control the firm must do so. These individuals would also be responsible for submitting the certification of disadvantage required by 26.67(a)(1). Recipients would look to these same disadvantaged individuals who must submit PNW statements to determine whether the persons claiming to control the firm meet other requirements of 26.71 (e.g., with respect to expertise). The firm must also meet the regulation's size standards (see 26.65). These standards provide that the firm - including its affiliates -- must meet SBA size standards and the statutory DBE size cap. Affiliation is an important concept in the DBE program. It does apply to firms owned by Indian Tribes. If it did not, then these firms could enjoy a significant competitive advantage over other DBE firms, because they could have access to the sometimes plentiful resources of their affiliates. At the same time, the Department recognizes that Indian Tribes often own a variety of businesses that could be considered affiliates because of common ownership by the entity. Literal application of the affiliation rule might therefore result in precluding firms owned by Indian tribes from participating in the DBE program.

Consequently, the Department interprets its rule to treat firms owned by Indian Tribes as entities as not being affiliated with other businesses owned by the entities if there is a firewall (i.e., a legally binding mechanism) in place to prevent the firms from accessing the resources of the entities' other businesses. For example, suppose an Indian Tribe owns a small construction company that is seeking DBE certification. The Tribe also owns several non-transportation related businesses. To avoid being considered an affiliate of the other businesses, the construction company would have to be subject to a legally binding provision precluding it from receiving any funds or other resources, directly or indirectly, from the other businesses.