

# FTA

FEDERAL TRANSIT ADMINISTRATION

## Jacksonville Transportation Authority Disadvantaged Business Enterprise Unified Certification Program (UCP) Review

Final Report  
October 2020



U.S. Department of Transportation  
Federal Transit Administration

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## Executive Summary

**Objective and Methodology:** This report details the results of a specialized review of Jacksonville Transportation Authority's (JTA) Disadvantaged Business Enterprise (DBE) certification practices and procedures. The specialized review examined JTA's Unified Certification Program (UCP) DBE certification procedures, management structures, actions, and documentation. Documents and information were collected from the Federal Transit Administration (FTA) and JTA. In addition, the following entities were interviewed as part of this review: JTA officials, JTA's UCP certifying and noncertifying members, DBE applicants, DBE certified firms, firms that were denied DBE certification, and other stakeholders. The on-site review included interviews, assessments of data collection systems, and review of program and relevant documents.

### **JTA's Certification Program includes the following positive program elements:**

#### **Positive Program Elements**

- JTA's UCP had very experienced and knowledgeable staff and a well-established process for reviewing applicant files to determine eligibility for certification as a DBE. The Director had been with the organization for over 15 years. The unit had an extensive training program, with the staff being constantly engaged in training throughout the year. Also, each staff member attends the UCP training conference held annually in April along with other members of the Florida UCP.
- JTA created a JTA DBE Desk Audit procedure to help standardize and increase the internal controls over the DBE certification process. A form was created that is used to review each completed certification application by a staff member that did not do the actual certification. This served as a check that all information had been obtained. In addition, the form is reviewed by a supervisor.
- JTA was on the Florida DBE UCP Executive Committee along with the Florida Department of Transportation and the Hillsborough County Aviation Authority and was heavily involved with statewide UCP activities including the Florida UCP Peer Review program. JTA staff have participated in two Peer Reviews offered through the Florida UCP. These peer reviews allow certain selected staff from peer organizations to review a pre-determined percentage of certification files. This process is overseen by FDOT DBE staff and ensures that the selected agency is processing all applications correctly and to ensure regulatory compliance and accountability.
- JTA had transitioned to the B2GNow DBE compliance program for the receipt and processing of certification applications. This tool helped to automate application processing functions and streamlined the overall application process.

### **The Program has the following administrative deficiencies:**

#### **Administrative Deficiencies**

- JTA's process did not indicate that they must respond within 20 days of USDOT's request for documentation, nor did it include the requirement to make information available to the firm and any third-party complainant involved.

### **The Program has the following substantive deficiencies:**

#### **Substantive Deficiencies**

- None noted

JTA's UCP receives an average of 43 DBE certification applications each fiscal year. In FY 2017, FY 2018, and FY 2019, JTA's UCP received a total of 130 certification applications. JTA's UCP has an internal process to review all applications within 30 days of receipt. JTA's UCP is able to

successfully adhere to this timeframe and is in compliance with the regulations for several reasons, including adherence to internal application processing standard operating procedures, use of DBE application management software (B2GNow), application processing checklists, and internal staff and supervisor application file reviews.

## I. General Information

This chapter provides basic information concerning this specialized review of JTA. Information on JTA, the review team, and the dates of the review are presented below.

<b>Recipient:</b>	Jacksonville Transportation Authority (JTA)
<b>City/State:</b>	Jacksonville, FL
<b>Recipient ID:</b>	1085
<b>Executive Official:</b>	Nathaniel Ford, Chief Executive Officer
<b>On-site Liaison:</b>	Ken Middleton, Director, Diversity, Equity, and Customer Advocacy
<b>Report Prepared By:</b>	The DMP Group
<b>Dates of On-site Visit:</b>	February 4–6, 2020
<b>Review Team Members:</b>	Dana Lucas, Lead Reviewer Gregory Campbell, Reviewer

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## 2. Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of the U.S. Department of Transportation (USDOT) to conduct Civil Rights specialized reviews. The reviews are undertaken to ensure compliance by applicants, recipients, and subrecipients with FTA's Master Agreement and (b) 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs."

As direct or indirect recipients of FTA funding assistance, the UCP and its members (i.e., USDOT recipients within the state) must comply with the DBE regulations at 49 CFR Part 26 as a condition associated with the use of these funds. The DBE regulations formed the basis for this specialized review; those regulations define the certification eligibility requirements that must be addressed and incorporated in JTA's UCP agreement.

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## 3. Purpose and Objectives

### 3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26. FTA has determined that a specialized review of JTA's UCP is necessary.

The DBE regulations require USDOT recipients to participate in a Unified Certification Program—as evidenced by a signed UCP agreement. The UCP provides “one-stop shopping” to applicants for DBE certification. An applicant is required to apply once for DBE certification, which will be honored by all recipients in the state.

The primary purpose of the specialized review is to determine the extent JTA has met its goal and objectives as represented to USDOT in its UCP agreement. This specialized review is intended to be a fact-finding process to (1) examine JTA's UCP and its certification practices and procedures, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

This specialized review is not to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its subrecipients, nor to adjudicate these issues on behalf of any party.

### 3.2 Objectives

The objectives of Unified Certification Programs, as specified in 49 CFR Part 26, are to:

- Adhere to the certification procedures and standards and the nondiscrimination requirements of 49 CFR Part 26.
- Cooperate fully with all oversight, review, and monitoring activities of USDOT and its operating administrations.
- Implement USDOT directives and guidance on DBE certification matters.
- Make all certification and decertification decisions on behalf of all UCP members with respect to participation in the USDOT DBE Program. Certification decisions by the UCP must be binding on all UCP members.
- Provide a single DBE certification that will be honored by all UCP members.
- Maintain a unified and current DBE directory containing at least the following information for each firm listed: address, phone number, and the types of work the firm has been certified to perform.
- Ensure the UCP agreement commits recipients to verify that the UCP has sufficient resources and expertise to carry out the requirements of 49 CFR Parts 26 and 23.

The objectives of this specialized review are to:

- Determine whether JTA is honoring the UCP agreement submitted to the Secretary of Transportation.
- Examine whether JTA is implementing the required certification procedures and standards of the regulations and official USDOT guidance, and to document the compliance status of each component.
- Gather information and data regarding the operation of JTA's UCP from certifying members through interviews and certification file review.

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## 4. Background Information

The purpose of this section is to provide an understanding of JTA's operations and scale. This section highlights JTA's services, budget, and the history of its DBE program.

### 4.1 Introduction to JTA and Organizational Structure

The Jacksonville Transportation Authority (JTA) Disadvantaged Business Enterprise (DBE) Program is part of the comprehensive Florida Unified Certification Program (UCP) developed by the U.S. Department of Transportation (USDOT), which established guidelines for the participation of firms owned and operated by socially and economically disadvantaged persons in USDOT-assisted contracting. USDOT approved Florida's UCP on March 25, 2004. As a major provider of public transportation and whose employees have extensive daily contact with the public, JTA recognizes its responsibility to the community it serves and is committed to a policy of nondiscrimination.

The DBE Program is housed within the Diversity, Equity, and Customer Advocacy Department. This department also oversees the EEO, Title VI, and ADA programs. In addition, JTA has transitioned to an automated certification intake and processing system, B2GNow. The JTA DBE Program has the following staff:

- Director
- Sr. Diversity Compliance Specialist
- Diversity Compliance Specialist I
- Diversity Compliance Specialist II

The DBE Program objectives are as follows:

- To create a level playing field on which such firms can compete fairly for JTA contracts;
- To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
- To increase participation of qualified firms that are owned, operated, and controlled by socially and economically disadvantaged individuals in the award and administration of USDOT-assisted contracts;
- To help remove present and past barriers to the participation of DBEs in USDOT-assisted contracts;
- To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet the eligibility standards are permitted to participate as DBE firms; and
- To assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

Staff are dedicated to ensuring that the DBE Program is implemented in accordance to 49 CFR Part 26. Each staff person takes part in FTA and USDOT webinar trainings and participates in the annual and quarterly trainings offered as members of the Florida UCP. Each staff member has successfully taken and passed the National Transit Institute's DBE/ACDBE certification course. A DBE Program budget for FY 2020 has been approved by the Board of Directors that allows staff the necessary resources to carry out all requirements and mandates for successful implementation.

According to the Florida UCP Agreement, the UCP has an Executive Committee comprising the Manager of the Equal Opportunity Office at the Florida Department of Transportation (FDOT) (or his or her designee), a certifying member selected annually by and among the Federal Aviation Administration (FAA) UCP members, and a certifying member selected annually by and among the FTA UCP members. The UCP Executive Committee is tasked with providing oversight and guidance and ensuring that the UCP members are compliant with the provisions established in the UCP Agreement and UCP Procedures Memoranda. The current Executive Committee is made up of representatives from FDOT, JTA, and the Hillsborough County Aviation Authority.

In addition to Executive Committee oversight, the UCP certifying members developed a multiyear peer review schedule to ensure regulatory compliance and accountability throughout the Florida UCP. The reviews consist of determining compliance with 49 CFR Part 26, the Florida UCP Agreement, and the Florida UCP Procedures Memoranda and include a comprehensive written report citing any deficiencies and corrective actions required.

There are currently 48 USDOT recipients participating in the Florida UCP. Nine members participate as Responsible Certifying Members (RCMs): Broward County, City of Tallahassee, FDOT, Greater Orlando Aviation Authority, Hillsborough County Aviation Authority, Jacksonville Transportation Authority, Lee County Port Authority, Miami-Dade County, and Volusia County. Each RCM is responsible for certifying DBEs that perform work in their respective fields of operation (FHWA, highways and bridges; FAA, aviation; and FTA, transit).

The 48 members currently participating in the Florida UCP are as follows:

1. Bay County Transportation Planning Organization
2. Boca Raton Airport Authority
3. Brevard County Space Coast Area Transit
4. Broward County Office of Economic and Small Business Development
5. Broward Metropolitan Planning Organization
6. Charlotte County Transit
7. City of Gainesville Regional Transit System
8. City of Key West Transit
9. City of Leesburg
10. City of Miramar
11. City of Naples Airport Authority
12. City of Ocala
13. City of St. Petersburg
14. City of Tallahassee

15. City of Umatilla
16. Collier Area Transit
17. Council on Aging of St. Lucie Inc. / Community Transit
18. Daytona Beach International Airport
19. Escambia County Area Transit
20. Florida Department of Transportation
21. Greater Orlando Aviation Authority
22. Hillsborough County Aviation Authority
23. Hillsborough Transit Authority
24. Indian River County Council on Aging
25. Jacksonville Aviation Authority
26. Jacksonville Transportation Authority
27. Key West International & Florida Keys Marathon Airports
28. Lake County
29. Lakeland Area Mass Transit District / Citrus Connection
30. Lee County
31. Lee County Port Authority
32. Lee County Transit
33. LYNX-Central Florida Regional Transportation Authority
34. Manatee County Area Transit
35. Melbourne Airport Authority
36. Miami-Dade County
37. Okaloosa County
38. Palm Beach County Department of Airports (Palm Beach International Airport & Palm Tran)
39. Palm Tran
40. Panama City-Bay County Airport & Industrial District
41. Pinellas Suncoast Transit Authority
42. Sarasota County Transportation Authority
43. Sarasota Manatee Airport Authority
44. South Florida Regional Transportation Authority
45. St. Johns County
46. St. Lucie County
47. St. Petersburg / Clearwater International Airport
48. Volusia Transit Authority

## 4.2 Budget and FTA-Assisted Projects

JTA's certification unit expenses are locally funded. JTA's UCP budget for FY 2020 is as follows:

Funding Source Funding Amount		
Federal – FTA	<b>Total:</b>	\$ 0
Federal – FHWA		\$ 0

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<b>Funding Source Funding Amount</b>		
State:		\$ 0
Local:	<b>\$420,357</b>	<b>\$420,357</b>
	<b>Grand Total:</b>	<b>\$420,357</b>



## 5. Scope and Methodology

### 5.1 Scope

The overall scope of this review is to determine whether JTA's UCP is (1) ensuring that only firms certified as eligible DBEs under 49 CFR §26.83 participate as DBEs on federally assisted projects, (2) implementing DBE certification standards and procedures, and (3) maintaining proper certification records and reporting as required to FTA and USDOT in accordance with the DBE program regulations. Specific program elements reviewed include:

DBE Eligibility (Certification Standards):

1. The rebuttable presumption that members of the designated groups identified in §§26.5 and 26.67 are socially and economically disadvantaged (49 CFR §26.61).
2. Collecting additional evidence of group membership when there is a well-founded reason to question the individual's claim of membership in a group (49 CFR §26.63).
3. Determining whether the applicant firm and existing DBEs are considered "small businesses" as defined by (a) current Small Business Administration (SBA) business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in USDOT-assisted contracts, and (b) the Department's statutory gross receipts cap of \$23.98 million. All size determinations are made by assessing firms' gross receipts averaged over a 3-year period (49 CFR §26.65).
4. Requiring applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged (49 CFR §26.67).
5. Excluding commercially useful function issues from certification decisions unless the firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program (49 CFR §26.73).
6. Evaluating the eligibility of a firm on the basis of present circumstances, assessing a firm's ownership and control (49 CFR §26.73, all sections of §§26.69 and 26.71).

### Certification Procedures

Before a firm is initially certified, the UCP must conduct an on-site visit to the firm's principal place of business and to job sites if there are any sites at which the firm is currently working at the time of the eligibility investigation [49 CFR §26.83(c)(1)]. The on-site interview must include an interview of the firm's principal officers and a review of their resumes and/or work histories.

1. Properly applying interstate certification requirements, timelines, and denial procedures (including stating good cause reason(s) and offering an opportunity for the firm to respond) (49 CFR §26.85).

2. Issuing denial letters, notices of intent to decertify, and final decisions that clearly explain the reasons for the action, including specific references to evidence in the record that supports each reason for the decision. In denial and decertification actions, the correspondence must inform the firm of the consequences of the decision and the availability of an appeal to USDOT (49 CFR §§26.86–26.89).
3. Maintaining proper records (i.e., application package for each certified firm; signed, notarized certification of social and economic disadvantage (49 CFR §26.67); affidavits of no change and documentation supporting firm size and gross receipts (e.g., submission of Federal tax returns); change notices; and on-site reviews) according to the recipient's financial assistance agreement (49 CFR §§26.11, 26.83(j)).

### **General Reporting Requirements**

1. Participation as a certifying or noncertifying UCP member—as evidenced by signing the UCP agreement (49 CFR 26.81 and 26.31). Agreements reflect and reference current certification practices and procedures, and amendments were approved by USDOT.
2. Maintaining a DBE directory of firms eligible to participate as DBEs in the UCP program. In the listing of each firm, the directory must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. The UCP must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work (49 CFR 26.31).
3. Submitting to USDOT's Departmental Office of Civil Rights the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following: (1) women; (2) socially and economically disadvantaged individuals (other than women); and (3) individuals who are women and are otherwise socially and economically disadvantaged individuals (49 CFR §26.11).
4. Entering certification denials and decertification data in USDOT's Departmental Office of Civil Rights ineligibility database (49 CFR §26.85(f)(1)).

## **5.2 Methodology**

The initial step of this specialized review consisted of consultation with the FTA Office of Civil Rights and a review of available information from the JTA UCP websites and other sources. After reviewing this information, potential dates for the site visit were coordinated.

The FTA Office of Civil Rights sent a notification letter to JTA that informed it of the upcoming visit, requested necessary review documents, and explained the areas that would be covered during the on-site visit. The letter also informed JTA of staff and other parties that would potentially be interviewed.

Before conducting the on-site visit, JTA was asked to provide the following documents:

- UCP Agreement, amendments, and approvals from USDOT.
- Memorandum of Understanding or similar documents forming the UCP (signed by all members of the UCP).
- The certification criteria/guidelines used in determining DBE eligibility.
- Standard Operating Procedures or similar documents that explain the DBE certification process, including copies of the application used during certification, personal net worth statement, annual affidavits/updates, etc.
- A list of all firms certified, denied, and decertified or removed by the UCP in FY 2017, FY 2018, and FY 2019. The list must include the firms' city, state, ethnicity, gender, date of site visit, reasons for denial and/or decertification (e.g., size, PNW, control, etc.), whether the denial decision was appealed to the UCP or USDOT, and a copy of USDOT's final agency decision.
- Explanation of UCP appeals processes. List the individuals involved in the appeals process, their reporting structure, and how they are selected.
- Any third-party complaints regarding DBE firms certified by the UCP and actions taken to resolve the matter.
- Any Freedom of Information Act or similar requests for certification information, and responses.
- A list of DBE firm(s) suspended, debarred, or decertified within the last three years.
- Other pertinent information related to UCP operations and procedures.

An opening conference was conducted at the beginning of the compliance review with JTA staff and the review team. FTA and FDOT representatives participated in the opening conference by conference call. The following people attended the opening conference:

**Jacksonville Transportation Authority**

Kelli O'Leary, Vice President, Engagement

Ken Middleton, Director – Diversity, Equity and Customer Advocacy

Yetunde Oyewole, Senior Diversity Compliance Specialist

Chris Macklin, Diversity Compliance Specialist II

Khisha Dukes, Assistant Vice President, Finance

Monique Thompson, Interim Director, Audit and Compliance

Eron Thompson, Capital Programming and Grants Manager

**Federal Transit Administration**

Scott Pichon, Equal Opportunity Specialist, Office of Civil Rights

Dee Foster, Civil Rights Officer

**Florida Department of Transportation**

Victoria Smith, EEO Manager

Sammy Febres, DBE and Small Business Development Manager

**The DMP Group**

Dana Lucas, Lead Reviewer

Gregory Campbell, Reviewer

The review team examined JTA's UCP certification and other documents that it submitted and conducted interviews with JTA's UCP members and staff regarding UCP administration, organizational structure, certification procedures, record keeping, monitoring, and enforcement. A sample of DBE applications and certification decisions was selected and reviewed. Additional interviews with DBE firms, applicant firms, decertified firms, and firms that were denied DBE certification were also conducted.

At the end of the review, FTA and FDOT representatives, JTA staff, and the review team convened for the final exit conference to review initial findings and corrective actions.

Following the site visit, a draft report was compiled and transmitted to JTA for comments on September 18, 2020. The final report incorporates JTA's responses and identifies the remaining open corrective actions.

### 5.3 Stakeholder Interviews

Prior to the on-site visit, the review team contacted DBE and non-DBE firms, UCP participants, and stakeholder organizations regarding their interaction with the Florida UCP.

#### **DBE Firms**

Four DBE firms were contacted for an interview to gain insight into how the UCP works with minority- and women-owned small businesses and learn about their experiences with the certification process. DBE firms contacted were:

- Albright International Inc.
- Available Pest Control Inc.
- Combined Industries
- Gack Group Inc. Dba Emerge Insurance Agency

Three DBEs responded to the interview request. The interview questions included:

1. Is your firm currently certified in the state UCP?
2. How did you learn about the UCP?
3. To which UCP certifying entity was your firm's certification application submitted?
4. Did the UCP acknowledge receipt of your application?
5. Did the UCP communicate the status of your firm's certification application review?
6. Was an on-site visit conducted with your firm?
7. Approximately how long did your firm's certification review and approval process take?
8. Have you visited the UCP DBE Directory website to verify the accuracy of your firm's profile and the types of work your firm has been certified to perform?

9. Are you familiar with the requirements for continued certification eligibility (such as annual updates, notification of change, personal net worth under the current limit, current tax returns, etc.)?
10. Do you have any concern(s) about the UCP or the certification process?

The three DBE firms interviewed learned about the UCP program through either the Jacksonville Small and Emerging Business program, word of mouth, or a JTA outreach session. JTA processed all of the certification applications. The firm representatives stated that the certification process took less than 60 days to complete. The representatives indicated that JTA acknowledged receipt of their applications and conducted an on-site visit at their places of business. None of the firms had visited the UCP DBE Directory website to verify the accuracy of their profile and the types of work they were certified to perform in the past two years. None of the DBEs had any issues with the UCP process and none had any complaints related to JTA certification.

### **Non-DBE Firms**

Six non-DBE firms were contacted for an interview to gain insight into how the UCP works with the non-DBE communities in the management of the UCP. The firms contacted were:

- Colliers International Northeast Florida
- Connexion Plus—Paratransit Choice Program
- C Robinson Associates, Inc.
- Exum Electric, Inc.
- J & D Maintenance And Services
- UZURV Holdings Inc

Four of the non-DBE firms responded to the interview request. The interview questions included:

1. Is your company familiar with the state Unified Certification Program (UCP) and the certifying authorities?
2. Has your company contacted the UCP regarding DBE / ACDBE certification requirements?
3. Has your company referred firms interested in DBE / ACDBE certification to the UCP?
4. Has your company participated in any outreach activities organized by the UCP?
5. Does your company utilize the UCP DBE Directory to identify firms for contracting opportunities?
6. Have you experienced any difficulties in accessing and/or searching the UCP DBE Directory?
7. Have you contacted the UCP for assistance in accessing and/or searching the directory for certified DBEs?
8. Have there been any issues regarding the type of work a certified DBE is listed to perform in the UCP Directory?

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9. Are you aware of any concern(s) about the UCP or the certification process?

All non-DBE firm representatives stated that their firms were familiar with the JTA UCP, and one of the firms had reached out to JTA regarding DBE certification requirements. All of the firms had referred interested DBEs to JTA's UCP for certification and two of the four had participated in outreach activities done by JTA. All of the firms used the DBE directory without any problems and none of the firms had or knew of any concerns with JTA's UCP process. The firms solicit DBE work in a variety of ways, some through past use of DBEs and using the DBE directory, one mentioned that she attended pre-bid meetings to meet DBEs, and one stated that he used the Jacksonville Small and Emerging Business (JSEB) program. None of the firms had performance issues with any of their DBEs or had to substitute one DBE for another. All but one mentioned that DBE monitoring was done periodically. None of the firms had payment issues with their DBEs, with two paying before they receive reimbursement and the other two paying their DBEs within 1 - 7 days. None of the firms were withholding retainage or issued joint check payments. When asked how DBE work is considered when submitting change order requests, two mentioned that there were no change orders requested, one stated that she based her decision on the change order, and one stated that her firm works to maintain 20 percent or greater DBE participation in their contracts.

### **Stakeholder Groups**

Six stakeholder organizations were contacted for an interview to gain insight into how the UCP works with external organizations and minority- and women-owned small businesses. The organizations contacted were:

- Beaver Street Enterprise Center
- CareerSource
- First Coast Business Alliance
- Jacksonville Chamber of Commerce
- Jacksonville Urban League
- Women in Transportation

Three stakeholders contacted responded to the interview request. The interview questions included:

1. Is your organization and membership familiar with the state Unified Certification Program (UCP) and the certifying authorities?
2. Are any of your members currently certified in the UCP?
3. Are any of your members currently applying for DBE or ACDBE certification with the UCP?
4. Has your organization ever contacted the state certifying authorities regarding DBE / ACDBE certification requirements?
5. Has your organization referred firms interested in DBE certification to the state UCP?
6. Does your organization include UCP information in its membership outreach literature?

7. Has your organization participated in any outreach activities organized by the state UCP?
8. Has the state UCP participated in any outreach activities organized by your organization?
9. What is your organization members' view of the state UCP?
10. Have members of your organization seen an increase in work as a result of becoming certified?
11. What is your agency's view of the effectiveness of the UCP?
12. Do you have any concern(s) about the UCP or the certification process?

Two of the three stakeholder groups were familiar with the federal requirements for UCP for DBEs as well as JTA's UCP. One responded that her members were currently certified in the JTA UCP. All three mentioned that their organizations had contacted JTA regarding DBE certification requirements and two had referred interested DBEs to JTA for certification. Only one of the organizations included JTA UCP information in its outreach literature and two had participated in JTA organized outreach activities. One of those two also publicizes and promotes JTA outreach to its members. Two of the organizations thought very highly of the effectiveness of JTA's UCP. One respondent stated that "[JTA's] DBE Program is considered the gold standard by which other organizations can and should measure up to." None were aware of any formal or informal complaints made against JTA's UCP and one mentioned that its members had experienced an increase in work as a result of becoming certified by JTA's UCP. None of the organizations had any concerns or suggestions about JTA's UCP.

Regarding JTA's DBE Program, two of the respondents were familiar with JTA's DBE Program and one had been requested to participate in the development of JTA's DBE goal. Two had been made aware of JTA contracting opportunities, one through emails and pre-bid meetings and one noted that her Board Chairman is a JTA employee who shares information regarding DBE opportunities with its members. None of the organizations were contacted to provide referrals for JTA's DBE contracting activities, but all participated in DBE outreach efforts. Two had positive comments about the JTA DBE Program's effectiveness and none were aware of any concerns or had any suggestions for JTA to improve their effectiveness.

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## 6. Findings and Advisory Comments

This chapter details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to JTA's UCP are provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and subrequirements are also presented below.

For the purposes of this section, the term "UCP" refers to the certifying members and/or other certification committees/entities associated with the Florida UCP.

Findings are expressed in terms of "deficiency" or "no deficiency." Findings of deficiency denote policies or practices that are contrary to the DBE regulations or matters for which FTA requires additional reporting to determine whether DBE compliance issues exist.

Findings of deficiency always require corrective action and/or additional reporting, and will always be expressed as:

- A statement concerning the policy or practice in question at the time of the review.
- A statement concerning the DBE requirements being violated or potentially being violated.
- A statement concerning the required corrective action to resolve the issue.

Advisory comments are statements detailing recommended changes to existing policies or practices. The recommendations are designed to ensure effective DBE programmatic practices or otherwise assist the entity in achieving or maintaining compliance.

### 6.1 Group Membership

#### (A) Burden of Proof

##### **Basic Requirement (49 CFR §26.61(b))**

The applicant firm bears the burden of proving, by a preponderance of the evidence, i.e., more likely than not, that it meets all DBE program certification requirements including group membership, disadvantage, ownership, control, and business size. A certifier is not required to prove that a firm is ineligible. A certifier can properly deny certification on the basis that an applicant did not submit sufficient evidence that it meets eligibility criteria.

The more stringent evidentiary standard of clear and convincing evidence applies in situations addressed by §26.69(h) (transfer of ownership from non-SED individual to SED individual) and §26.71(l) (transfer of control from non-SED individual to SED individual).

## Discussion

During this review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding the requirement.

The Florida UCP Agreement, approved on March 25, 2004, states that the UCP (and its certifying members) will comply with all certification procedures and standards set forth in 49 CFR Part 26, Subparts D and E. However, JTA's DBE Certification Policy and Procedures did not include specific provisions for the burden of proof standards for determining whether to certify a firm as eligible to participate as a DBE in 49 CFR 26.61(a–e).

All files reviewed during the compliance review confirmed that JTA was following the burden of proof standards.

## Advisory Comment

It is an effective practice to have written policies and procedures to ensure compliance with applicable federal regulations.

## (B) Additional Evidence of Group Membership

### Basic Requirement (49 CFR §26.63)

If a UCP has a “well-founded reason” to question the individual's claim of membership in that group, it must require the individual to present additional evidence that he or she is a member of the group. The UCP must provide the individual with a *written explanation* of its reasons for questioning his or her group membership. The UCP must take special care to ensure that it does not impose a disproportionate burden on members of any particular designated group.

## Discussion

During this review, no deficiencies were found with this requirement.

The Florida UCP Procedures Memorandum #2011-002 – *Establishing Group Membership / Citizenship Status* stated, “Notwithstanding 26.61(c), a Certifying Member, having well founded reason to question an individual's membership in that group, must require the individual to present additional evidence that he or she is a member of that group. Certifying members must provide the individual with a written explanation of their reasons for questioning his or her group membership, and a written request for additional evidence, i.e. a sworn or affirmed affidavit attesting to the individual having held him or herself out as a member of the group in the relevant community for a significant period of time prior to submitting the application for certification.”

JTA's DBE Certification Policy and Procedures stated that “An application is thoroughly reviewed....ownership of 51% must be representative of one of the presumptive groups. This step may generate additional questions or concerns that will require communication with the owner for clarification. All communication is done via email as documentation to be added to the file.”

A review of the applicant files indicated that JTA had not identified a reason to question an applicant's claim of membership.

## 6.2 Business Size

### **Basic Requirement (49 CFR §26.65)**

A UCP must apply current SBA business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in USDOT-assisted contracts. In addition, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years in excess of \$23.98 million. (*Dollar amount subject to change.*)

### **Discussion**

During this review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding the requirement.

JTA's DBE Certification Policy and Procedures stated that "a firm (and its affiliates) must be a small business as defined by the Small Business Administration (SBA) and annual gross receipts averaged over a three-year period cannot exceed \$23.98M, with some exceptions."

However, the policies and procedures did not include provisions regarding the requirements contained in Part 26.65(a) that members must use North American Industry Classification System (NAICS) codes to determine if an applicant firm meets the SBA business size standards in 13 CFR Part 121 for the appropriate type(s) of work the firm seeks to perform in USDOT-assisted contracts.

JTA's B2GNow system generated the SBA size standards for the applicable NAICS code identified by the applicant, and all certification files reviewed contained the required business tax returns for the determination of the firm's small business size eligibility. All applicants were found in compliance with the size requirements.

### **Advisory Comment**

It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR Part 26 and ensure that JTA maintains compliance with the UCP regulations.

## 6.3 Social and Economic Disadvantage

### (A) Presumption of Disadvantage

#### **Basic Requirements** (49 CFR §§26.5, 26.61, and 26.67(a)(1))

There is a rebuttable presumption that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged (SED) individuals. The UCP must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, SED. Individuals who are not presumed to be a member of these groups, and individuals for whom the presumption has been rebutted, have the burden of proving by a preponderance of the evidence that they are SED. The UCP must ensure that its review process comports with this standard.

#### **Discussion**

During this review, no deficiencies were found with this requirement.

The Florida UCP Procedures Memorandum #2005-001.0 – *UCP Application Requirement – DBE Firms* stated, “Responsible Certifying Members (RCMs) shall ensure that all DBE firms submit or have submitted a UCP DBE Application, and that all the required documentation attendant thereto is a part of the DBE file.” JTA used the model certification application provided by USDOT, which includes an Affidavit of Certification that the presumptively disadvantaged owner is socially and economically disadvantaged.

In accordance with the requirements of 26.67(a)(1), all certification files examined by the review team included the signed and notarized certification that the presumptively disadvantaged owner is in fact, socially and economically disadvantaged.

### (B) Personal Net Worth

#### **Basic Requirement** (49 CFR §26.67(a)(2))

A UCP must require each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth (PNW) that does not exceed \$1.32 million. All applicants must use the USDOT PNW form in Appendix G without change or revision. In determining an individual’s net worth, a UCP must observe the following requirements:

1. Exclude the individual’s ownership interest in the applicant firm.
2. Exclude the individual’s equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the

equity calculation and not as a separate liability on the individual's PNW form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

3. Do not use a contingent liability to reduce an individual's net worth.
4. With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

## Discussion

During this review, no deficiencies were found with this requirement.

The Florida UCP Procedures Memorandum #2005-001.2 – *Personal Net Worth Requirements – DBE Firms Certified* stated:

*RCMs shall ensure that all DBE firms submit or have submitted a USDOT Personal Net Worth form, signed and notarized.*

In addition, JTA's DBE Certification Policy and Procedures stated:

*Personal Net Worth (PNW) must be less than \$1.32M (excluding ownership interest in the applicant firm's and the individual's equity in his or her primary residence). Each applicant must submit a signed and notarized statement of personal net worth along with a personal net worth worksheet.*

All certification files reviewed included a PNW form provided in Appendix G of the regulations without change or revision and personal income tax information that adequately substantiated the claims made on the PNW form.

## (C) Rebutting the Presumption of Economic Disadvantage

### Basic Requirement (49 CFR §26.67(b))

A UCP may rebut the presumption of economic disadvantage in two ways:

1. If the applicant's PNW exceeds \$1.32 million. In this instance, the UCP is not required to conduct a proceeding to rebut the presumption.
2. If the applicant's PNW statement and supporting documentation demonstrate that the applicant is able to accumulate substantial wealth. In this instance, the UCP must conduct a proceeding under §26.67(b)(2). In making this determination, the UCP may consider factors that include, but are not limited to, the following: (1) whether the annual

average adjusted gross income of the owner over the most recent three year period exceeds \$350,000; (2) whether the income was unusual and not likely to occur in the future; (3) whether the earnings were offset by losses; (4) whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm; (5) other evidence that income is not indicative of lack of economic disadvantage; and (6) whether the total fair market value of the owner's assets exceed \$6 million.

## **Discussion**

During this review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding the requirement.

JTA does not have written procedures for rebuttal of presumption of economic disadvantage in accordance with the requirements of 49 CFR Part 26.67(b)(i) and (ii). However, JTA's certification staff were adequately trained and knowledgeable about these requirements.

Per review of the certification files, there was no evidence that any of the applicants' PNW was above \$1.32 million or that they could accumulate substantial wealth.

## **Advisory Comment**

It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR Part 26 and ensure that JTA maintains compliance with the UCP regulations.

## **(D) Individual Determinations of Social and Economic Disadvantage**

### **Basic Requirement (49 CFR §26.67(d) and Appendix E)**

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged may apply for DBE certification. UCPs must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is SED based on the requirements set forth in Appendix E.

## **Discussion**

During this review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding the requirement.

JTA does not have written procedures for individuals not presumed to be socially and economically disadvantaged in accordance with the requirements of 49 CFR Part 26.67(d) and Appendix E. However, JTA's certification staff were adequately trained and knowledgeable about these requirements, and Appendix E requirements were properly applied in the certification files of Caucasian male applicants.

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**Advisory Comment**

It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR Part 26 and ensure that JTA maintains compliance with the UCP regulations.

**6.4 Ownership****Basic Requirement (49 CFR §26.69(a-j))**

To be an eligible DBE, a firm must demonstrate, by a preponderance of the evidence, that it is at least 51 percent owned by SED individuals. Section 26.69(h) describes when the higher evidentiary standard of clear and convincing evidence applies.

(A) The owners upon whom the firm relies for DBE certification must have made a real, substantial, and continuing contribution of capital or expertise to acquire their ownership; the ownership must not be pro forma in nature. The applicant firm should submit proof of a capital contribution at the time it submits its DBE application; however, the firm is permitted to submit it any time before the UCP makes a final eligibility decision.

(B) When marital assets are used to acquire ownership, the nondisadvantaged spouse must irrevocably transfer and renounce his ownership rights in the firm.

Indicators of compliance: The applicant firm materials should include proof of the transfer and renunciation before the UCP makes a final eligibility decision. UCPs are encouraged to notify the applicant firm that proof of renunciation is missing from the DBE application and allow the firm to provide it within a reasonable timeframe.

**Discussion**

During this review, no deficiencies were found with this requirement.

JTA's DBE Certification Policy and Procedures stated:

*The ownership of 51% must be representative of the presumptive groups; Women, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans. (Those outside of the presumptive group must prove by providing documentary evidence that they are socially and economically disadvantaged and will be considered on a case-by-case basis).*

The certification files reviewed contained documentation that the applicant firms were owned at least 51 percent by socially and economically disadvantaged individuals and evidence of contribution used to acquire ownership in the firm.

## 6.5 Control

### Basic Requirement (49 CFR §26.71(a-q))

(A) *Independence*: A DBE firm's viability must not depend on a relationship(s) with another firm(s); to make the determination, the UCP should consider the four factors in §26.71(b).

(B) *Restrictions*: Formal or informal restrictions, such as a quorum provision in the firm's bylaws, must not limit the customary discretion of the SED owners (§26.71(c)). A SED owner must hold the highest officer position in the company. In a corporation, SED owners must control the board of directors. In a partnership, one or more SED owners must serve as general partners, with control over all partnership decisions (§26.71(d)).

(C) *Involvement by non-SED individuals and Delegations*: Individuals who are not SED or immediate family members may be involved in a DBE firm; however, they must not possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm. [§26.71(e)]. The SED owners may delegate authority as long as such delegations are revocable, and the SED owners retain the power to hire and fire any person to whom such authority is delegated. UCPs must be able to reasonably conclude that the SED owners actually control all aspects of the firm (§26.71(f)).

(D) *Overall Understanding, Technical, and Managerial Competence*: SED owners must have an overall understanding of the firm's principal business activities. They are *not* required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees (§26.71(g)).

(E) *Licensure*: If State or local law does not require owners to have a license or credential to own and/or control a firm, UCPs must not deny certification solely on the ground that the person lacks the license or credential. However, the UCP may consider the absence of the license or credential as *one factor* in determining whether the SED owners actually control the firm (§26.71(h)).

(F) *Remuneration*: Differences in remuneration do not necessarily indicate that SED owners do not control the firm. UCPs should consider the differences in remuneration in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. Remuneration differences between a former non-SED owner and current SED owner is a factor in determining who controls the firm, particularly when the non-SED individual remains involved with the firm and continues to receive greater compensation than the SED individual (§26.71(i)).

(G) *Outside Employment or Business Interests (Time and Attention)*: Having outside employment does not automatically mean that the SED owners do not control the firm. UCPs should consider whether the outside employment or other business interest conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. An individual could be viewed as controlling a part-



time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating (§26.71(j)).

(H) *Involvement of Immediate Family Members*: A SED individual may control a firm even though one or more of the individual's immediate family members, even if they are not SED, participate in the firm. If a UCP cannot determine that the SED owners—as distinct from the family as a whole—control the firm, then the SED owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities (§26.71(k)).

(I) *The Higher Burden of Proof Standard*: Where a firm was formerly owned and/or controlled by a nondisadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to an SED individual, and the nondisadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the nondisadvantaged individual unless the SED individual now owning the firm demonstrates, by clear and convincing evidence, that (1) the transfer of ownership and/or control to the SED individual was made for reasons other than obtaining certification as a DBE; and (2) the SED individual controls the firm, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned and/or controlled the firm (§26.71(l)).

(J) *Equipment*: A UCP must not determine that a firm is not controlled by SED individuals solely because the firm leases, rather than owns, equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the firm's independence (§26.71(m)). To become certified in an additional type of work, the firm need demonstrate only that its SED owners are able to control the firm with respect to that type of work (§26.71(n)).

## Discussion

During this review, no deficiencies were found with these requirements.

JTA staff indicated that they scrutinized documentation provided with each application and through interviews with applicant staff to ensure firms were independent from any non-DBE firm and that firm owners possessed the power to direct or cause the direction of management and policies of the firm, including day-to-day and long-term decision-making. In addition, JTA used a comprehensive on-site review checklist and questionnaire to obtain information during the on-site visit with the applicant's staff to ensure that socially and economically disadvantaged owners had an overall understanding of, and possessed the technical and managerial competence for, the type of business in which the firm engaged.

The applicant files reviewed contained documentation that the applicant firm was independent and controlled by socially and economically disadvantaged owner(s). The files included such documents as the firm's bylaws, articles of incorporation, board minutes, resumes, salaries, certifications and licenses, and a completed On-Site Review form.

## 6.6 Interstate Certification

### Basic Requirement (49 CFR §26.85)

The interstate certification rule applies when any firm that is currently certified in its home State (“State A”) seeks DBE certification in another State (“State B”). The DBE regulations do not permit State B to require the certified DBE to submit a new uniform certification application as if it were seeking certification for the first time. State B should process each application for interstate certification, on a case-by-case basis, using the two options described in §§26.85(b) or 26.85(c):

Option 1: Proceed under §26.85(b) to confirm current home-state certification and certify the firm. State B may verify by checking State A’s directory (preferable) or obtaining State A’s written confirmation.

Option 2: Proceed under §26.85(c) and notify the Applicant-DBE that it must provide all of the information required by §26.85(c)(1)-(4). State B may require the applicant-DBE to submit *only* the information described in section §26.85(c). The regulations require the applicant to submit an affidavit that all of the information it submitted to State B is a complete and identical copy of the information submitted to State A. If the on-site report from State A is more than three years old, as of the date of its application to State B, the regulations permit State B to require that the firm’s affidavit to affirm that the facts in the on-site report remain true and correct.

Common indicators of noncompliance\*:

- State B asked the DBE for information not listed in §26.85(c).
- State B denied the interstate certification application without giving the DBE written notification identifying and describing at least one of the five “good cause” reasons for the denial.
- State B denied the interstate certification application based on a mere interpretive disagreement with State A about a regulatory provision or factual conclusion.
- State B denied the interstate certification application because it thinks State A did not adequately evaluate the DBE’s eligibility.
- State B asked the DBE for an updated PNW statement even though the DBE timely submitted to State A an annual affidavit(s) of no-change.
- State B, without new information previously unavailable to State A, re-evaluated a DBE owner’s economic disadvantage based on a belief that the owner has the ability to accumulate substantial wealth.
- State B decertified a DBE solely because State A decertified it.
- State B received an interstate certification application from a Native American-owned firm and certified the firm without verifying whether the Federal government or State B recognize the tribe.

*\*This is not an exhaustive list of indicators of noncompliance. UCPs and reviewers should apply the subsections of §26.85 and also refer to USDOT’s official guidance on interstate certification.*

## Discussion

During this review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding the requirement.

Florida UCP Procedure Memorandum #2011-003 – *Interstate Certification and Procedure*, Memorandum #2015-001 – *Interstate Applications – Processing*, and JTA's DBE Certification Policy and Procedures outlined the details regarding processing of interstate certification requests. A firm currently certified in its home state is not required to submit a new uniform application when seeking certification in the State of Florida. JTA accepts a completed copy of the DBE application that was originally submitted to the firm's home state along with all the documents required in paragraphs (c)(1) through (c)(4) of Part 26.85.

JTA's DBE Certification Policy and Procedures stated that JTA will immediately check the USDOT database to confirm that the applicant has not been decertified or denied and will contact the home state to request a copy of the home state's on-site report within seven days of receipt of the original application.

The procedures further stated that JTA will notify the applicant of either a certification denial or acceptance decision within 60 days of receipt of a completed application. If JTA denies certification, the denial letter will include specific reasons for the denial and provide the applicant with an opportunity to respond.

JTA's procedures did not include procedures for what JTA would do if it determined that there is good cause to believe that the home state's certification was erroneous or should not apply in the State of Florida in accordance with 26.85(d)(4).

A review of four interstate files confirmed that JTA was following its stated procedures. The files contained completed applications for the home state, along with all required documentation and the home states' on-site reports.

## Advisory Comment

It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR Part 26 and ensure that JTA maintains compliance with the UCP regulations.

## 6.7 Other Rules Affecting Certification

### Basic Requirement (49 CFR §26.73)

UCPs must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE. However, the UCP may consider whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program. DBE firms and firms seeking DBE certification must cooperate fully with UCP requests for information relevant to the certification process.

## Discussion

During this review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding the requirement.

JTA's DBE Certification Policy and Procedures did not include procedures that it must not consider commercially useful function issues when deciding to certify a firm in accordance with 26.73(a)(1).

In the files reviewed, there was no documentation relating to commercially useful function issues or documentation that showed a pattern of conduct indicating the applicant firm's involvement in attempts to evade or subvert the intent or requirements of the DBE program. In addition, JTA certification staff indicated that the certified applicant firms reviewed cooperated fully with JTA's requests for information relevant to the certification process.

## Advisory Comment

It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR Part 26 and ensure that JTA maintains compliance with the UCP regulations.

## 6.8 UCP Requirements

### (A) UCP Agreement

#### Basic Requirement (49 CFR §26.81)

All USDOT recipients in a state must participate in a UCP. Recipients must sign an agreement establishing the UCP for the state and submit the agreement to the Secretary for approval.

## Discussion

During this review, no deficiencies were found with this requirement.

The Florida UCP Agreement was approved by USDOT on March 25, 2004 and included the signatures of the UCP certifying and noncertifying members. The Agreement established the composition and responsibilities of an Executive Committee, whose responsibilities include providing oversight of the UCP and ensuring compliance with Part 26 in accordance with Part 26.81. The Executive Committee comprises the Manager of the Equal Opportunity Office in FDOT, a certifying member selected annually by and among the FAA UCP members, and a certifying member selected annually by and among the FTA UCP members. The Executive Committee holds a statewide membership meeting at least once a year or more often as needed for continued monitoring of the UCP and ongoing processes. The Executive Committee also provides DBE certification training to its members to ensure compliance with the provisions of the Agreement and Part 26.

The Agreement is supported by Procedure Memoranda effective 2005 through 2019. The most recent 2019 Procedure Memoranda were approved by FDOT on June 3, 2019 and were primarily a result of the FTA UCP Compliance Review of FDOT conducted in February 2019. The 2019 Memoranda included the following:

2019-001	<i>Mandatory Suspension</i>
2019-002	<i>Optional Summary Suspensions</i>
2019-003	<i>Availability, Confidentiality, Cooperation, and Intimidation or Retaliation</i>
2019-004	<i>Appeal Response Requirements</i>
2019-005	<i>Certification Decisions – 1</i>
2019-005.1	<i>Certification Decisions – 2</i>
2019-006	<i>Verification of Group Membership – Native American</i>

JTA has incorporated the Procedure Memoranda into its DBE UCP process.

## **(B) UCP Directory**

### **Basic Requirement (49 CFR §§23.31, 26.31, and 26.81(g))**

UCPs must maintain a unified DBE directory containing, for all firms certified by the UCP, the information required by §26.31. The directory must include if the firm is an ACDBE, a DBE, or both. The listing must include for each firm its address, phone number, and types of work the firm has been certified to perform as a DBE. The UCP must update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

### **Discussion**

During this review, no deficiencies were found with this requirement.

The Florida UCP Agreement stated that FDOT will serve as the DBE Directory Manager and shall assume the following responsibilities with regard to the DBE Directory:

1. *Keep and maintain the up-to-date electronic DBE Directory;*
2. *Ensure its availability to all UCP Members and other interested parties;*
3. *Make available printed copies of the Directory upon request; and*
4. *Provide Certifying Members with access to certification information in the DBE Directory through the Internet.*

In addition, the Agreement states that certifying members will, within three business days of receipt of any new application for DBE certification, complete input to the directory application software to prevent duplication of work on any DBE application. When a certifying member makes a DBE certification approval decision, information will be submitted to the online DBE Directory by the certifying member within three business days of approval. All data elements required by Part 26.31 will be included in the DBE Directory for certified DBEs.

The Florida UCP DBE Directory contained live data maintained through FDOT's Equal Opportunity Gateway (EOG) system. Each certifier has immediate access to the EOG system

and is responsible for the input of new certification applications, certification approvals, deletions, and other changes as soon as they occur.

The directory identifies all firms eligible to participate as DBEs. The directory lists the firm's name, contact person, address, phone number, fax number, email, certification type (DBE/ACDBE), NAICS code, and a description of work the firm is certified to perform. The directory is available electronically to the public and searchable in HTML, PDF, and Excel report formats at <https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory>.

The Florida UCP DBE Directory contains approximately 3,755 DBE/ACDBE certified firms.

## 6.9 Entering Information into USDOT's Ineligibility Database

### Basic Requirement (49 CFR §26.85(f))

If the UCP denies a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, or decertify a firm, in whole or in part, you must make an entry in USDOT's Ineligibility Determination Online Database. The UCP must enter the following information:

- The name of the firm.
- The name(s) of the firm's owner(s).
- The type and date of the action.
- The reason for the action.

UCPs must check the DOCR website at least once every month to determine whether any firm that is applying to the UCP for certification, or that the UCP has already certified, is on the list.

For any such firm that is on the list, the UCP must promptly request a copy of the listed decision from the UCP that made it. The UCP receiving such a request must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. The UCP receiving the decision must then consider the information in the decision in determining what, if any, action to take with respect to the certified or applicant firm.

### Discussion

During this review, no deficiencies were found with this requirement.

JTA's DBE Certification Policy and Procedures stated:

*When a firm is denied or decertified, information about decertification must be entered into the USDOT DBE/ACDBE Ineligibility Database. Required information to be entered about the firm includes:*

- *Applicant Type (DBE or ACDBE),*
- *FEIN,*

- *Firm Name,*
- *Firm Address*
- *Owner names*

*Required information to be entered about the decision:*

- *UCP decision*
- *UCP decision date*
- *Reason for decision*

JTA's records indicated there were no firms denied or decertified during the review period that would require entry in USDOT's Ineligibility Determination Online Database.

## 6.10 UCP Procedures

### (A) Uniform Certification Application

#### **Basic Requirement** (49 CFR §26.83(c)(2))

UCPs must use the Uniform Certification Application (UCA) in Appendix F of 49 CFR Part 26 without change or revision. However, a UCP may, *with the approval of the concerned operating administration*, supplement the form by requesting additional information not inconsistent with the DBE regulations.

#### **Discussion**

During this review, no deficiencies were found with this requirement.

In accordance with the Florida UCP Agreement and JTA's DBE Certification Policy and Procedures, JTA used the Uniform Certification Application Form provided in Appendix F of the regulations without change or revision. The current application was available online through JTA's Business Diversity Management System (B2GNow).

The DBE files reviewed included the USDOT Uniform Certification Application, which was accessed online through the B2G system for in-state applicants.

### (B) On-Site Visits

#### **Basic Requirement** (49 CFR §26.83(c)(1))

UCPs must perform an on-site visit to the principal office location of the applicant firm. The UCP must interview the principal officers of the firm and review their résumés and/or work histories. The UCP must also visit a job site, if there is one, at which the firm is working at the time of the eligibility evaluation in the UCP's jurisdiction or local area.

**Discussion**

During this review, no deficiencies were found with this requirement.

The Florida UCP Certification Procedures stated:

*Certifying Members shall conduct a site visit to the principal place of business of an applicant firm prior to DBE certification and submission or direct input via the Internet to the DBE Directory.*

JTA's DBE Certification Policy and Procedures stated:

*An onsite visit is scheduled with applicant at the principal place of business. If there is a job-site convenient, a visit to the job-site may be conducted. During the site visit, interviews are conducted with the owners of the firm that are qualifying the firm for eligibility. They are asked a series of questions that relate to the information that was submitted in the application. All answers from the owner during the site visit are documented in the On-Site Report. The site visit questionnaire is part of the UCP certification process.*

The Florida UCP has a standardized On-Site Review Report and Checklist that was used by certifying members. All of the certification files reviewed contained evidence of the required on-site visits, including documentation of the On-Site Review Reports.

**(C) 30-Day Notification****Basic Requirement (49 CFR §26.83(l))**

The UCP must advise each applicant firm within 30 days of receiving the UCA and accompanying documents whether the application package is complete and suitable for evaluation and, if not, what additional information or action is required.

**Discussion**

During this review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding the requirement.

The Florida UCP Certification Procedures and JTA's DBE Certification Policy and Procedures included a provision that an applicant firm is sent an email within 30 days of receipt, acknowledging receipt of the application and notifying the firm if additional information is required.

During the discussion with certification staff and file review, staff indicated they were contacting applicants either by phone or email well before the 30-day timeframe; however, this action was not well documented in the certification files. Some of the emails were obtained from the certifying staff email accounts upon search, but some certification files did not include the emails or documentation of a phone call when applicable.



**Advisory Comment**

It is an effective practice to develop and implement a process to document the 30-day notification to the applicant in the applicant files.

**(D) 90-Day Determinations****Basic Requirement (49 CFR §26.83(k))**

The UCP must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under the DBE regulations. The UCP may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.

**Discussion**

During this review, no deficiencies were found with this requirement.

The Florida UCP Certification Procedures and JTA's DBE Certification Policy and Procedures stated:

*A certification determination must be made within 90 days of receiving a complete application.*

A review of JTA's certification files confirmed the certification determinations were made within the 90-day requirement.

**(E) Annual Updates****Basic Requirement (49 CFR §26.83(h)-(j))**

Once the UCP has certified a DBE, it must remain certified until and unless the UCP removes its certification. The UCP may not require DBEs to reapply for certification or undergo a recertification process. The certified DBE must provide to the UCP, every year on the anniversary of the date of its certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths. If the certified firm fails to comply with the annual submission requirement, it will be deemed to have failed to cooperate under §26.109(c). Failure or refusal to cooperate is grounds for removing a firm's certification under §26.87.

**Discussion**

During this review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding the requirement.

The Florida UCP Procedures and JTA's DBE Certification Policy and Procedures required certifying members to provide notice to all certified DBE firms regarding the required submission of a No Change Declaration not less than 90 days in advance of the Anniversary Date. Florida UCP Procedure Memorandum #2006-006.1 – *No Change Declaration – Support Document Requirements*, dated March 31, 2015, stated:

*Responsible Certifying Members (RCMs) will require that all DBE firms, in order to continue DBE eligibility, submit a No Change Declaration annually on or before the Anniversary Date.*

*The No Change Declaration submission shall include:*

- 1. A complete business tax return for the most recent tax year (Forms 1120, 1120S, 1065 Schedule C, etc.)*
- 2. Complete affiliate business tax returns, as above for the most recent tax year.*

The certification files reviewed did not contain the annual affidavits. JTA was aware of the issue and in response had implemented a process to update all files. JTA's certification staff queried its database to identify those firms that hadn't submitted an annual no change affidavit and federal tax returns within three months or longer. Those firms were sent an email on December 18, 2019 indicating that they needed to submit annual affidavit documentation if they were interested in continuing their DBE certification. The firms were given seven days to respond to the email with their intent to either maintain their DBE certification or indicate their desire to be removed. The email provided a link to the Contract Compliance System where recipients could go directly to submit documentation.

A number of firms provided the required documentation in response to the email, and three firms indicated their desire to be removed from the directory.

Staff is now in the process of reviewing those firms that haven't responded and preparing documentation to remove them from the DBE Directory in accordance with DBE regulations.

In speaking with the FDOT DBE Program Office, the review team learned that the EOG system also has the functionality to show whether a firm has provided annual affidavit documentation for the current year. Staff will use that option on a monthly basis to monitor annual submission of required documentation to ensure compliance with this requirement.

## 6.1.1 Denials of Applications for Certification

### (A) Initial Request Denials

#### **Basic Requirement (49 CFR §26.86(a))**

When a UCP denies a request by a firm that is not currently certified with it, to be certified as a DBE, the UCP must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial.

When a firm is denied certification, the UCP must establish a timeframe of no more than 12 months before the firm may reapply for certification.

## Discussion

During this review, no deficiencies were found with this requirement.

The Florida UCP Procedures and JTA's DBE Certification Policy and Procedures outlined the process for the denial of initial requests for certification. The procedures stated:

*When denying an applicant, a written explanation of the reasons for the denial specific to applicable Code of Federal Regulations (CFR), must be provided. [The denial letter] must include the process for an appeal, and clearly state that the firm must file for the appeal within 90 days of the date of the denial. [The applicant] must also be informed that all appeals must be sent directly to the U.S. Department of Transportation.*

JTA had one denial over the last three years. Per review of the file, DAK Resources, Inc. was denied due to insufficient documentation provided to confirm the applicant firm was socially disadvantaged. The denial letter, dated October 3, 2016, explained the reasons for the denial, cited the regulation for each of the reasons, and described the business owner's right to appeal the decision by sending an appeal letter to USDOT. The denial letter also informed the business owner that the firm could reapply to the program in 12 months. DAK Resources appealed the decision to USDOT and JTA's decision was overturned. JTA indicated additional information was provided by DAK Resources during the appeal process and the U.S. Departmental Office of Civil Rights (DOCR) recommended that JTA accept the additional information. JTA accepted and reviewed the additional information, and upon satisfactory completion of the on-site visit, the firm was subsequently certified.

## (B) Removing Existing Certification (Decertification)

### Basic Requirement (49 CFR §26.87)

If a UCP determines that there is reasonable cause to believe that the firm is ineligible, the UCP must provide written notice to the firm that the UCP proposes to find the firm ineligible, setting forth the reasons for the proposed determination. When the UCP notifies the firm that there is reasonable cause to remove its certification, the UCP must offer the firm an opportunity for an informal hearing or to submit additional information to rebut the UCP's findings. In a proceeding to remove a firm's certification under §26.87, the UCP must prove, by a preponderance of the evidence, that the firm no longer meets certification standards. Following the final decision, the UCP must provide written notice of the final decision and a rationale for that decision and reference specific evidence in the record to support each reason for the decision.

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## Discussion

During this review, no deficiencies were found with this requirement.

The Florida UCP Procedures and JTA's DBE Certification Policy and Procedures outlined the process for decertification/removal of DBE eligibility. The procedures stated:

*The Responsible Certifying Member (RCM) may base such a decision only on one or more of the following:*

- 1. Changes in the firm's circumstances since the certification of the firm by the RCM;*
- 2. Information or evidence not available at the time the firm was certified;*
- 3. Information that was concealed or misrepresented by the firm in previous certification actions;*
- 4. A documented finding that the determination to certify the firm was faulty or erroneous; and*
- 5. Failure to provide the "No Change Declaration" on or before the firm's anniversary date – subjects a firm to decertification proceedings for failure to cooperate (see 49 CFR 26.109(c)).*

*JTA as the RCM will immediately prepare a "Notice of Intent to Remove Certification," in the format adopted by the Florida UCP. The DBE firm will be given 21 days from the date of the notice to either provide documents or contact JTA. If the DBE fails to provide the supporting documentation or contact JTA on or before the 21-day deadline, the JTA shall immediately prepare a "Notice of Removal." Once the removal notice is sent, the [DBE] database is updated in the Staff Actions and the DBE status is changed to OBE (Other Business Enterprise). DOCR database is updated with the decertification information.*

JTA had no removals in the last three years.

## (C) Mandatory Summary Suspension

### Basic Requirement (49 CFR §26.88(a))

The UCP must immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

## Discussion

During this review, the UCP did not summarily suspend the DBE certification of any firms. No deficiencies were found with this requirement.

The Florida UCP Procedure Memorandum #2019-001 – *Mandatory Suspension* was developed and approved by FDOT on June 3, 2019, as a result of the FTA UCP compliance review of FDOT. JTA incorporated the new memorandum into its process as follows:

*Florida UCP certifying members hereby implement the requirements of 49 CFR, Part 26 at 26.88, thus assuring a seamless administrative process for suspending DBE's certification when a certifying disadvantaged owner either dies or is incarcerated. This suspension shall occur without adhering to the requirements of 26.87(d). The DBE is notified of the suspension via certified mail to the last known address.*

*The suspension is a temporary status while the recipient determines if the DBE is eligible to participate in the program. During the course of the suspension, the DBE may voluntarily withdraw from the program. Within 30 days the recipient must reinstate the DBE, or commence decertification under 26.87(d). Suspension is not appealable to USDOT. Failure to lift the suspension or decertify is appealable to USDOT.*

#### **(D) Optional Summary Suspension**

##### **Basic Requirement (49 CFR §26.88(b))**

The UCP may immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances that may affect the eligibility of the DBE firm to remain certified as required by §26.83(i) or fails to timely file an affidavit of no change under §26.83(j).

##### **Discussion**

During this review, the UCP did not opt to summarily suspend the DBE certification of any firms. No deficiencies were found with this requirement.

The Florida UCP Procedure Memorandum #2019-002 – *Optional Suspension* was developed and approved by FDOT on June 3, 2019, as a result of the FTA UCP compliance review of FDOT. JTA incorporated the new memorandum into its process as follows:

*Florida UCP certifying members hereby implement the requirements of 49 CFR, Part 26 at 26.88, thus assuring a seamless administrative process for suspending DBE's certification when recipient becomes aware of a material change in circumstances that may affect the program eligibility of the DBE. This includes failure of the DBE to notify recipient of changes as required per 26.83(i) or failure to provide an annual No Change Declaration as required per 26.83(j). This suspension shall occur without adhering to the requirements of 26.87(d). The DBE is notified of the suspension via certified mail to the last known address on record.*

*The suspension is a temporary status while the recipient determines if the DBE is eligible to participate in the program. During the course of the suspension, the DBE may voluntarily withdraw from the program. Within 30 days the recipient must reinstate the DBE, or commence decertification under 26.87(d). Suspension is not appealable to USDOT. Failure to lift the suspension or decertify is appealable to USDOT.*

**(E) Appeals to USDOT****Basic Requirement (49 CFR §26.89)**

When DOCR receives an appeal and requests a copy of the administrative record, the UCP must provide the administrative record, including a hearing transcript, within 20 days of the request.

**Discussion**

During this review, a deficiency was found with this requirement.

The Florida UCP Procedures and JTA's DBE Certification Policy and Procedures outlined the process for appeals to USDOT and stated that a firm denied certification or whose eligibility is removed has 90 days to appeal the decision to the U.S. Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE, Washington, DC 20590.

JTA's procedures also stated that USDOT will request copies of all documentation (including hearing transcripts and interviews) used in making the determination not to certify the appellant. However, JTA's process did not indicate that they must respond within 20 days of USDOT's request, nor did it include the requirement to make information available to the firm and any third-party complainant involved.

**Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, JTA must update the written policies and procedures to clearly indicate that the UCP must respond within 20 days of USDOT's request for a copy of the administrative records, including a hearing transcript, and to make information available to the firm and any third-party complainant involved in accordance with Part 28.89.

**6.12 Compliance and Enforcement****(A) DBE Enforcement Actions****Basic Requirement (49 CFR §26.107)**

If a firm does not meet the eligibility criteria of subpart D and attempts to participate in a USDOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations, or under circumstances indicating a serious lack of business integrity or honesty, USDOT may initiate suspension or debarment proceedings against the firm under 49 CFR Part 29.

**Discussion**

During this review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding the requirement.

JTA used the USDOT Uniform Certification Application, which includes the penalties for fraudulent or false statements. The review team observed the use of the USDOT Uniform Certification Application form while reviewing the paper and electronic certification files. However, JTA did not have written procedures that incorporated the regulations pertaining to enforcement actions that may be initiated against a firm in accordance with Part 26.107.

**Advisory Comment**

It is an effective practice to have detailed written policies and procedures that adequately address the regulations pertaining to enforcement actions that may be initiated against a firm in accordance with Part 26.107.

**(B) Confidentiality****Basic Requirement (49 CFR §§26.83(g) and 26.109(a))**

Notwithstanding any provision of Federal or State law, UCPs must not release information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes DBE certification and supporting documentation.

**Discussion**

During this review, UCP did not receive requests for records from third parties. No deficiencies were found with this requirement.

The Florida UCP Procedure Memorandum #2019-002 – *Optional Suspension* was developed and approved by FDOT on June 3, 2019, as a result of the FTA UCP compliance review of FDOT. JTA incorporated the new memorandum into its process. The Procedure Memorandum stated the following regarding confidentiality:

*UCP certifying members shall make available to the public any information concerning the DBE program release of which is not prohibited under Federal law. Recipients must not make available information that is considered confidential business without written consent from the individual who submitted the information. This includes the application and supporting information. However, this information must be available to USDOT during the certification appeals or any other states in which the firm has applied for certification.*

## (C) Cooperation

### Basic Requirement (49 CFR §26.109(c))

All participants in the DBE program are required to cooperate fully and promptly with USDOT and recipient specialized reviews, certification reviews, investigations, and other requests for information. (49 CFR §26.73(c) DBE firms and firms seeking DBE certification must cooperate fully with the UCP's requests (and USDOT requests) for information relevant to the certification process. Failure or refusal to provide such information is grounds for a denial or removal of certification.

### Discussion

During this review, no deficiencies were found with this requirement.

The Florida UCP Procedure Memorandum #2019-003 – *Availability, Confidentiality, Cooperation, and Intimidation or Retaliation* was developed and approved by FDOT on June 3, 2019, as a result of the FTA UCP compliance review of FDOT. JTA incorporated the new memorandum into its process. The Procedure Memorandum stated the following regarding cooperation:

*Participants who participate in the DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings or non-responsibility for future contracts and/or suspension and debarment).*

## 6.13 Record Keeping

### Basic Requirement (49 CFR §26.11(d))

The UCP must maintain records documenting a firm's compliance with the DBE requirements. At a minimum, the UCP must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. Other certification or compliance related records must be retained for a minimum of 3 years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.

### Discussion

During this review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding the requirement.



JTA's DBE Certification Policy and Procedures stated the following regarding record keeping:

*All DBE files are kept in the locked file room. Records are shelved alphabetically by status. Tax returns are kept for three consecutive current years and old tax returns are handled per record retention requirements. Inactive files are kept for a minimum of three years and handled by guidance of record retention requirements.*

However, in practice, JTA has implemented an online application system, B2GNow, which is used by applicants to submit the DBE application and upload all required supporting documentation (application package), as well as all annual affidavit declarations, tax returns, and change notices. In addition, JTA DBE certification staff uploaded the on-site visit reports and other relevant documentation. Therefore, while JTA had a process in place to maintain the required certification documentation, the written policy and procedures did not reflect current practices.

### **Advisory Comment**

It is an effective practice to have detailed written policies and procedures that reflect current record keeping practices that comply with the requirements of Part 26.11(d).

## **6.14 Submitting Reports to USDOT**

### **Basic Requirement (49 CFR §26.11(e))**

Each year, the State department of transportation in each UCP must report to DOCR the number of certified DBEs its DBE Directory that are (1) Women; (2) Socially and economically disadvantaged individuals (other than women); and (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals (49 CFR §26.11).

### **Discussion**

FDOT is required to submit reports to USDOT in accordance with Part 26.11(e). This requirement does not apply to JTA.

## **6.15 Training of Certification Application Review Staff**

### **Basic Requirement**

On August 22, 2018, USDOT issued official guidance titled: "What steps should a UCP take to ensure that its DBE/ACDBE certification application-review staff are properly trained?" A UCP is responsible for ensuring and documenting the following:

1. The current certification application-review staff successfully complete all nine of the certification training modules provided by DOCR before they begin to review certification applications.

2. The current certification application-review staff view DOCR's "Recorded Presentation of the Rule," which describes changes to the DBE rules instituted through the DOT final rule issued October 2, 2014 (found at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-final-rule-and-program-activities>) before they begin to review certification applications.
3. The current certification application-review staff complete all new, revised, or updated training modules or materials when DOCR makes them available through its website.
4. Keeping accurate training records for all certification application-review staff.

UCP Staff who have not documented their completion of the mandatory training and viewing of the "Recorded Presentation of the Rule," should not be permitted to review certification applications.

## 7. Summary of Files Review and Findings

While on site, the review team requested and reviewed the record for at least two of each type of firm listed below (i.e., two firms certified for less than one year, two firms certified for more than one year, two firms certified on appeal, and four interstate firms). The results of the file review are reported in the following tables.

File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Blue Stone Services	Y	Y	Y	NA	Y	N	NA	NA
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	NA	NA	NA
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Spectrum Signs and Graphics, Inc.	Y	Y	Y	NA	Y	N	NA	NA
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	NA	NA	NA
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	BBC Solar	Y	Y	Y	Y	Y	N	NA	NA
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	NA	NA	NA
	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Medic Inc.	Y	Y	Y	Y	Y	N	NA	NA
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	NA	NA	NA

	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year – Certified on Appeal	DAK Resources	Y	Y	Y	Y	Y	N	Y	Y
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	NA	NA	Y
	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year – Certified on Appeal	The R-A-M Professional Group, Inc.	Y	Y	Y	Y	Y	N	Y	Y
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	NA	NA	Y
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate >1 year	Whitman May Enterprises	Y	Y	Y	Y	Y	N	NA	NA
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	NA	NA	NA
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate >1 year	Jeezny Sourcing	Y	Y	Y	Y	Y	N	NA	NA
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	NA	NA	NA
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate >1 year	PowerSiesta, LLC	Y	Y	Y	Y	Y	N	NA	NA
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	NA	NA	NA
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate <1 year	Crave InfoTech, LLC	Y	Y	Y	NA	Y	N	NA	NA
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	N	Y	Y	NA	NA	NA

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
1. Burden of Proof	26.61	ND, AC			
2. Group Membership	26.63	ND			
3. Business Size	26.65	ND, AC			
4. Social/Economic Disadvantage					
A) Presumption of Disadvantage	26.67	ND			
B) Personal Net Worth	26.67	ND			
C) Individual Determination	26.67	ND, AC			
D) Individual Determinations of Social/Economic Disadvantage	26.67	ND, AC			
5. Ownership	26.69	ND			
6. Control	26.71	ND			
7. Other Certification Rules	26.73	ND, AC			
8. UCP Requirements					
A) UCP Agreement	26.81	ND			
B) UCP Directory	26.31	ND			
9. UCP Procedures					
A) On-Site Visits	26.83	ND			
B) Uniform Application	26.83	ND			
C) 30-Day Notification	26.83	ND, AC			
D) 90-Day Processing	26.83	ND			
E) Annual Updates	26.83	ND, AC			
10. Interstate Certification	26.85	ND, AC			
11. Denials					
A) Initial Request	26.86	ND			
B) Remove Existing	26.87	ND			
C) Mandatory Summary Suspension	26.88(a)	ND			
D) Optional Summary Suspension	26.88(b)	ND			
E) Appeals	26.89	D	JTA's process did not indicate that they must respond within 20 days of USDOT's request, nor did it include the requirement to make information available to the firm and any	JTA must update the written policies and procedures to clearly indicate that the UCP must respond within 20 days of USDOT's request for a copy of the administrative records, including a hearing	60 days

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies	Corrective Action(s)	Response Days/Date
			third-party complainant involved.	transcript, and to make information available to the firm and any third-party complainant involved in accordance with Part 28.89.	
12. Compliance and Enforcement					
A) DBE Enforcement Actions	26.107	ND, AC			
B) Confidentiality	26.109	ND			
C) Cooperation	26.109	ND			
13. Record Keeping	26.11(d)	ND, AC			
14. Submitting Reports to USDOT	26.11(e)	NA			

Findings at the time of the site visit: ND = no deficiencies found; NA = not applicable; AC = advisory comment.

## **ATTACHMENT A – FTA NOTIFICATION LETTER TO JTA**



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

Headquarters

East Building, 5th Floor, TCR  
1200 New Jersey Avenue, SE  
Washington, DC 20590

November 8, 2019

Nathaniel P. Ford, Sr.  
Chief Executive Officer  
Jacksonville Transportation Authority  
100 N Myrtle Avenue  
Jacksonville, FL 32204

Dear Mr. Ford:

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs" by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE specialized reviews of grant recipients. Jacksonville Transportation Authority (JTA) has been selected for a review of its Unified Certification Program (UCP) compliance as a certifying partner in the Florida UCP to take place February 4–6, 2020.

The purpose of this review will be to determine whether JTA is meeting its obligations, as represented by certification to FTA, to comply with the all applicable provisions of 49 CFR Part 26.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE certification procedures (including, but not limited to discussions to clarify items previously reviewed, work-site visits, and interviews with staff), interviews with UCP certifying and non-certifying members, DBE applicants, DBE certified firms, firms that were denied DBE certification, and other stakeholders, possible work-site visits, and an exit conference. The reviewers will complete the on-site portion of the review within a four-day period. FTA has engaged the services of The DMP Group, LLC (DMP) of Washington, D.C., to conduct this specialized review. Representatives of DMP and FTA will participate in the opening and exit conferences, with FTA participating by telephone.

We request an opening conference at 9 a.m., on Tuesday, February 4, 2020, to introduce the DMP team and FTA representatives to JTA. Attendees should include you and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. The review team will need adequate working space and the use of privately controlled offices with internet access to conduct interviews and review documents. Please let us know if you will designate a member of your staff to serve as JTA's liaison with the review team and will coordinate the on-site review and address questions that may arise during the visit. So that we may properly prepare for the site visit, we request that you provide the information described in the enclosure, which consists of items that the review team must receive within



30 calendar days of the date of this letter. Please forward these materials to the following contact person:

Donald Lucas  
The DMP Group, LLC  
2233 Wisconsin Avenue NW, Suite 228  
(202) 726-2630 Office  
(202) 297-2942 Mobile  
*donald.lucas@thedmpgroup.com*

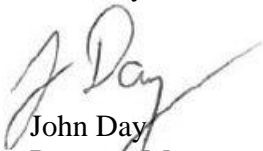
FTA requests your attendance at an exit conference scheduled for 11 a.m., on Thursday, February 6, 2020. The exit conference will afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide a Draft Report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The Draft and Final Report, when issued to JTA, will be considered public documents subject to release under the Freedom of Information Act, upon request.

JTA representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact me at 202-366-1671, or via e-mail at *john.day@dot.gov*.

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,



John Day  
Program Manager  
FTA Office of Civil Rights

Enclosure

cc: Yvette G. Taylor, Regional Administrator, FTA Region 4  
Selene Faer Dalton-Kumins, Associate Administrator, FTA Office of Civil Rights

## **Enclosure**

**The following information must be submitted to DMP within 30 calendar days from the date of this letter:**

1. Current Unified Certification Program Agreement.
2. Current Memorandum of Understanding or similar documents forming the Florida Unified Certification Program (which should be signed by all members of the UCP).
3. Documentation of meetings, correspondence, and other communications between the UCP certifying partners in the implementation of the program during the past three years.
4. A narrative that describes the JTA individuals and resources dedicated to implementing the DBE UCP requirements, handling DBE UCP inquiries, and educating JTA staff on DBE UCP. The narrative should include an organization chart showing JTA's DBE UCP staff and a budget showing funds allocated to the DBE UCP.
5. The certification criteria/guidelines used in determining DBE eligibility.
6. Standard Operating Procedures or similar documents that explain the DBE certification process, including copies of the application used during certification, annual affidavits/updates, and personal net worth (PNW), etc.
7. JTA-specific certification procedures (sometimes called desk procedures) consistent with and supplemental to the State's UCP procedures, if applicable.
8. Documents or forms used during DBE certification site visits.
9. Written procedures for updating the UCP DBE Directory.
10. A list of all firms certified, denied, and decertified or removed by the UCP from federal fiscal year 2017 to present. The list must include:
  - a) the firm's city and state
  - b) the firm's ethnicity
  - c) the firm's gender
  - d) the date the application was received
  - e) the date of site visit
  - f) the date the application was determined to be complete
  - g) eligibility determination date
  - h) the reasons for denial and/or decertification (e.g., size, PNW, control, etc.)
  - i) whether the denial decision was appealed to the UCP or USDOT
  - j) The result of the appeal.
11. A description of JTA's UCP appeals process(es). List the individuals involved in the appeals process and how they are selected.
12. A narrative that describes how JTA satisfies DBE certification staff training requirements.
13. Documentation confirming DBE certification staff have met DBE certification training

requirements (i.e., training certifications and/or certificates).

14. Any third-party complaints regarding DBE firms certified by the JTA and actions taken to resolve the matter in the past three (3) years.
15. Any Freedom of Information or similar request for certification information in the past three (3) years.
16. Any enforcement action against a DBE firm (e.g., suspension, debarment, etc.) regarding certification in the past three (3) years.
17. Other pertinent information determined by JTA's staff to illustrate its UCP operations and procedures.

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## **ATTACHMENT B – JTA’S RESPONSE TO DRAFT REPORT**

JTA provided no comments to the draft report.

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U.S. Department  
of Transportation  
**Federal Transit  
Administration**

Headquarters

East Building, 5th Floor, TCR  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

October 23, 2020

Nathaniel P. Ford, Sr.  
Chief Executive Officer  
Jacksonville Transportation Authority  
100 N. Myrtle Avenue  
Jacksonville, FL 32204

RE: Unified Certification Program (UCP) Specialized Review Final Report

Dear Mr. Ford:

This letter concerns the Federal Transit Administration's (FTA) Disadvantaged Business Enterprise (DBE) Review of the Jacksonville Transportation Authority's (JTA) Unified Certification Program conducted from February 4-6, 2020. Enclosed is a copy of the Final Report, which will be posted on FTA's website on our DBE page.

The FTA Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of our ongoing oversight efforts, FTA conducts a number of onsite reviews to ensure compliance with the applicable provisions of 49 CFR Part 26. FTA uses the findings from these reviews to provide direction and technical assistance to transit agencies in order to achieve compliance with 49 CFR Part 26.

Unless otherwise noted, all corrective actions identified in the Final Report must be undertaken within 60 days of the date of this letter. Once we have reviewed your submissions, we will request either clarification or additional corrective action, or will close out the finding if your response sufficiently addresses the DBE requirements. Please submit your responses to me at [john.day@dot.gov](mailto:john.day@dot.gov).

We appreciate the cooperation and assistance that you and your staff have provided us during this review, and we are confident JTA will take steps to correct the deficiencies. If you have any questions about this matter, please contact Ed Birce at 202-366-1943 or via email at [guljed.birce@dot.gov](mailto:guljed.birce@dot.gov).

Sincerely,

John R. Day  
Program Manager  
FTA Office of Civil Rights

Enclosure

cc: Yvette G. Taylor, Regional Administrator, FTA Region 4  
Selene Faer Dalton-Kumins, Associate Administrator, FTA Office of Civil Rights