



F E D E R A L T R A N S I T A D M I N I S T R A T I O N

New Orleans Regional Transit Authority
Disadvantaged Business Enterprise
Unified Certification Program (UCP) Review

Final Report
November 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 New Orleans Regional Transit Authority's (RTA) Disadvantaged Business Enterprise (DBE) certification practices and procedures. The specialized review examined RTA's DBE certification procedures, management structures, actions, and documentation as a certifying member in the Louisiana Unified Certification Program (LAUCP). Documents and information were collected from the Federal Transit Administration (FTA) and RTA. In addition, the following entities were interviewed as part of this review: RTA officials, LAUCP 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.

RTA's Certification Program includes the following positive program elements:

Positive Program Elements

- **Program Leadership** – RTA has a new Compliance Officer/DBELO who has begun implementing improvements to RTA's certification procedures (e.g., certification file checklists, Annual No Change Affidavit enforcement).
- **Individual Determinations of Social/Economic Disadvantage** – When an applicant does not meet the criteria for presumptive social and economic disadvantage, RTA effectively evaluates the applicant and determines whether the applicant is eligible per DBE program regulations.
- **Ownership and Control** – RTA was very thorough in evaluating firm ownership and control. RTA implemented procedures that include an exhaustive evaluation of company formation documents, on-site visit results, and owner credentials.

The Program has the following administrative deficiencies:

Administrative Deficiencies

- **DBE Program Plan/Procedures** – RTA's certification procedures in its DBE Program Plan did not address all required areas, did not include enough detail, and did not reflect actual practice. RTA must update its DBE Program Plan or other procedural document (e.g. "desk procedures") to include detailed procedures on how it satisfies all required program elements.
- **Record Keeping** – RTA's certification files were missing required information (e.g., personal and business income tax returns, 30-day notifications, and annual updates).

The Program has the following substantive deficiencies:**Substantive Deficiencies**

- **UCP Agreement** – The procedures in the LAUCP Agreement for maintaining the DBE directory do not reflect actual practice, and not all procedures described in the LAUCP Agreement appear to be implemented (i.e., monitoring certifying agencies and Executive Committee meeting participation).
- **30-Day Notification** – RTA was not sending and/or documenting 30-day notifications, as required.
- **Annual No Change Affidavits** – RTA did not adequately ensure DBE compliance with annual update requirements.
- **Decertification** – RTA did not provide documentation confirming that it properly notified DBEs when RTA considered them for decertification or when it made final decertification decisions.
- **DBE Directory** – RTA did not maintain current information in the LAUCP DBE Directory for the DBEs it certified
- **Entering Information into USDOT's Ineligibility Database** – Neither RTA nor the lead agency in LAUCP were entering RTA's denials and decertifications into the database, as required. RTA was not checking the database prior to certifying DBEs.

During the review period, RTA received fewer than 10 DBE certification applications each fiscal year. In FY 2017, FY 2018, and FY 2019, RTA reported it received a total of 25 certification applications. RTA has an internal process to review all applications within 30 days of receipt; however, documentation of RTA's review was not included in all certification files. RTA consistently makes certification decisions within 90 days, as required.

I. General Information

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

Recipient:	New Orleans Regional Transit Authority
City/State:	New Orleans, LA
Recipient ID:	1519
Executive Official:	Alex Z. Wiggins, Chief Executive Officer
On-site Liaison:	Keziah Lee Cawthorne, DBE Compliance Officer
Report Prepared By:	The DMP Group
Dates of On-site Visit:	March 10–12, 2020
Review Team Members:	Donald Lucas, Lead Reviewer Khalique Davis, Reviewer Brian Cripps, 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 (a) 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 the LAUCP 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 RTA's involvement as a certifying member in LAUCP 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 RTA 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 RTA'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 RTA is honoring the UCP agreement submitted to the Secretary of Transportation.
- Examine whether RTA 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 LAUCP from certifying members through interviews and certification file review.

4. Background Information

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

4.1 Introduction to RTA and Organizational Structure

The LAUCP was established in October 2004 in response to the 1999 DBE regulatory mandate requiring all U.S. Department of Transportation (USDOT) recipients in each state to establish a single uniform process for certifying DBEs and to establish and maintain a centralized DBE Directory for use by all DBE program participants in each state. The USDOT approved the LAUCP on November 2, 2004. LAUCP comprises four certifying members and 95 noncertifying members. RTA is a LAUCP certifying member. The other LAUCP certifying members are the Louisiana Department of Transportation and Development (LADOTD), the Louis Armstrong New Orleans International Airport, and the LADOTD New Orleans DBE Office (formerly the Orleans Levee District). The LADOTD functions as the lead agency responsible for maintaining the LAUCP DBE Directory. The 95 LAUCP noncertifying members are as follows:

- | | |
|--|---|
| 1. City of Abbeville | 24. Port Fourchon |
| 2. Acadia Airport District # 1 (Le Gros) | 25. Town of Franklinton |
| 3. Acadiana Regional Airport | 26. Harry P. Williams Memorial Airport |
| 4. Airport Com. Of Airport District | 27. Hammond Northside Regional Airport |
| 5. Alexandria International Airport | 28. City of Hammond |
| 6. City of Alexandria | 29. Town of Homer |
| 7. Allen Parish Police Jury | 30. Houma Terrebonne Airport Comm. |
| 8. Avoyelles Parish Police Jury | 31. Iberia Parish Government |
| 9. Assumption Parish Police Jury | 32. IMCAL |
| 10. Baton Rouge Metro. Airport | 33. Jefferson Davis Parish Police Jury |
| 11. City of Baton Rouge - EBR Parish | 34. Jefferson Parish Transit |
| 12. Beauregard Parish Airport District | 35. Jonesville Municipal Airport |
| 13. City of Bogalusa | 36. Lafayette Airport Commission |
| 14. Bunkie Municipal Airport | 37. Lafayette Parish Consolidated Govt. |
| 15. Caldwell Parish Police Jury | 38. LaSalle Parish Police Jury |
| 16. Capital Area Transit System | 39. City of Lake Charles |
| 17. Capital Region Planning Commission | 40. City of Leesville |
| 18. Capital Transportation Corp. | 41. LA DOTO |
| 19. Chennault International Airport | 42. LA Regional Airport |
| 20. Claiborne Parish Police Jury | 43. Madison Parish Police Jury |
| 21. Concordia Parish Airport | 44. Marksville Municipal Airport |
| 22. Delhi Municipal Airport | 45. Monroe Regional Airport |
| 23. DeSoto Parish Police Jury | 46. City of New Orleans |
| 47. City of DeQuincy | 72. New Orleans Aviation Board |
| 48. City of Donaldsonville | 73. Non-Flood Protection Asset Mgt Auth |
| 49. City of Eunice | 74. Orleans Levee District |
| 50. False River Regional Airport | 75. Port of South LA |
| 51. Orleans Levee District | 76. Shreveport Downtown Airport |

- | | |
|--------------------------------------|---|
| 52. Port of South LA | 77. Shreveport Regional Airport |
| 53. Town of Many | 78. City of Slidell |
| 54. City of Minden | 79. South Central Planning & Develop. |
| 55. City of Monroe | 80. Southland Field |
| 56. Olla Airport | 81. Springhill Airport |
| 57. Plaquemine Parish Government | 82. Tangipahoa Parish Council |
| 58. Pointe Coupee Parish Police Jury | 83. Terrebonne Parish |
| 59. Town of Rayville | 84. Union Parish Police Jury |
| 60. Red River Parish Police Jury | 85. Vernon Parish Police Jury |
| 61. Regional Transit Authority | 86. Vicksburg Tallulah Dist Airport Bd |
| 62. River Parishes Transit Authority | 87. Town of Vivian |
| 63. City of Ruston | 88. Webster Parish Police Jury |
| 64. St. Bernard Urban Rapid Transit | 89. West Carroll Parish Airport Authority |
| 65. St. James Parish Council | 90. City of West Monroe |
| 66. St. John the Baptist Airport | 91. City of Winnfield |
| 67. St. Martin Parish | 92. Winnsboro Municipal Airport |
| 68. St. Mary Parish Government | 93. Regional Planning Com. (Orleans |
| 69. St. Tammany Parish Government | 94. City of Shreveport |
| 70. St. Landry Parish Airport | 95. City of Thibodaux |
| 71. Scott Airport | |

LAUCP certifying members are responsible for certifying DBEs in primarily one of two regions. Region 1, defined as statewide, is the responsibility of LADOTD. Region 2, defined as New Orleans and surrounding areas, is the responsibility of RTA, the Louis Armstrong New Orleans International Airport, and the LADOTD New Orleans DBE Office. Firms that have their primary place of business outside of Region 2 apply for certification through LADOTD. Firms that have their primary place of business inside of Region 2 apply for certification through one of the three Region 2 certifying agencies. Typically, firms interested in competing on FTA-funded contracting opportunities apply for certification through RTA; firms interested in competing on Federal Highway Administration-funded contracting opportunities apply through the LADOTD DBE Office; and firms interested in competing for concessionaire services apply through the Louis Armstrong New Orleans International Airport.

The LAUCP is governed by an Executive Committee comprising one representative from each certifying agency and two members at large from two separate, noncertifying agencies. Executive Committee members are elected by a majority of the membership. The Executive Committee ensures uniformity among the certifying agencies and makes recommendations for amendments and revisions to the LAUCP Agreement or any associated documents or materials related to the LAUCP. The Executive Committee is also responsible for monitoring and evaluating certifying agency performance on a semi-annual basis, hearing and resolving certification appeals by applicant firms, and resolving disputes related to decertifications, denials, and other certification-related disputes. The Executive Committee meets quarterly or when circumstances warrant a special meeting.

RTA's DBE Compliance Officer/DBE Liaison Officer (DBELO) manages and administers RTA's DBE program, including DBE certification, with support from RTA finance and legal staff. RTA's DBE Compliance Officer/DBELO is also supported by Metro Source, a local consulting firm that provides RTA with DBE program subject matter expertise and DBE program support staff. The DBE Compliance Officer/DBELO manages the receipt of applications and the conduct of on-site visits and makes certification decisions. Because LADOTD manages the LAUCP DBE Directory, RTA's

DBE Compliance Officer/DBELO coordinates with LADOTD staff to communicate RTA's certification decisions and related information so firms' certification status is accurately reflected in the LAUCP DBE Directory.

4.2 Budget and FTA-Assisted Projects

RTA reported that its certification unit expenses are locally funded. RTA's UCP budget for FY 2020 is as follows:

Funding Source Funding Amount		
Federal – FTA	Total:	\$ 0
Federal – FHWA		\$ 0
State:		\$ 0
Local:	\$277,000	\$277,000
	Grand Total:	\$277,000

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5. Scope and Methodology

5.1 Scope

The overall scope of this review is to determine whether RTA 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 LAUCP 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 RTA 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 RTA of staff and other parties that would potentially be interviewed.

Before conducting the on-site visit, RTA 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 RTA staff and the review team. FTA representatives participated in the opening conference by conference call. The following people attended the opening conference:

New Orleans Regional Transit Authority

Alex Wiggins, Chief Executive Officer

Mark A. Major, Chief Financial Officer

Keziah Cawthorne, DBE Compliance Officer/DBELO

Federal Transit Administration

Guljed Birce, Equal Opportunity Specialist, FTA Headquarters

Marisa Appleton, Regional Civil Rights Officer, FTA Region 6

The DMP Group

Donald Lucas, Lead Reviewer

Khalique Davis, Reviewer

Brian Cripps, Reviewer

The review team examined RTA's certification and other documents that it submitted and conducted interviews with RTA's 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 representatives, RTA 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 RTA for comments on October 22, 2020. The final report incorporates RTA's responses and identifies the remaining open corrective actions.

5.3 Stakeholder Interviews

Prior to the on-site visit, the review team attempted to contact DBE firms and stakeholder organizations regarding their interaction with RTA's certification process.

DBE Firms

Attempts were made to interview 14 certified DBE firms listed in the LAUCP DBE Directory that had been certified by RTA concerning their experiences with the certification process. Five of the 14 firms were interviewed. Seven firms were reached but declined to be interviewed. The phone number in the LAUCP DBE Directory for one of the seven firms was no longer in service, but an active phone number was found by searching the Internet. Two firms could not be reached because the phone number provided in the DBE Directory was no longer in service and no contact information was found for these firms on the Internet.

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 statement, current tax returns, etc.)?*
10. *(IF Denied) Did you receive a denial letter indicating the reason for denial?*
11. *Where you made aware of your right to appeal your denial?*
12. *Do you have any concern(s) about the UCP or the certification process?*

The firms interviewed all had similar experiences. Their applications were processed within 30 days, and they had been made aware of the status of their application throughout the application review process either informally or formally. The firms reported receiving official notification of their application via an email, phone call, or a request for additional documents. One firm did not receive an application acknowledgement letter, but the interviewee reported that it was in contact with RTA throughout the application review period and received approval

in a reasonable amount of time. All the firms reported that RTA conducted an on-site visit, except for one. In lieu of an on-site visit, the firm reported that RTA conducted an interview of the firm's owner via video conference.

One firm that had initially been denied contacted RTA to dispute the basis for the denial. RTA advised the firm to file an appeal with USDOT. After filing the appeal, the firm was approved and has since reported that RTA has been helpful in its development.

Only two firms had reviewed their listings in the directory. All the firms were aware of the requirement to provide an annual update, and most of them had recently completed their annual update.

All the firms spoke favorably of their certification experience. Some individuals expressed an interest in a simplified application process.

Stakeholder Groups

Attempts were made to interview five stakeholder organizations to gain insight into how RTA works with external organizations that advocate on behalf of minority- and women-owned small businesses.

Only one of the organizations 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?

The organization was familiar with the federal requirements for UCP for DBEs as well as RTA's DBE program, including its involvement in the UCP. The organization reported that it was aware

of firms that it had assisted unrelated to RTA that were participants in RTA's DBE program and competed for RTA contracting opportunities. Included in the business development resources provided by the organization was information on LAUCP DBE certification contacts, including RTA. In addition, the organization stated it participated in several DBE and small business networking and information events with RTA. The organization reported that based on its interaction with RTA, it believed RTA's certification program was effective and had no concerns.

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 RTA'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 LAUCP.

Findings are expressed in terms of "deficiency" or "no deficiency." Findings of deficiency denote policies or practices that are contrary to 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-socially and economically disadvantaged (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 Louisiana Unified Certification Program (LAUCP) Agreement, entered by RTA on October 14, 2004, states that the “The LAUCP agrees to follow all certification procedures and standards of 49 CFR Part 26, Subpart E on the same basis as recipients.” Although requirements regarding certification procedures are codified in 49 CFR Part 26, Subpart E, requirements for certification standards are codified in 49 CFR Part 26, Subpart D, and for accuracy purposes should be reflected accordingly.

In its most recent DBE Program Plan, dated February 13, 2020, RTA provided details describing how it determines whether applicants meet the burden of proof requirements in 49 CFR 26.61(a–e). In most cases, RTA’s documented procedures reflected actual practice as determined from on-site interviews with RTA DBE staff and a comprehensive review of several applicant files. However, as described in the following sections, in some cases RTA’s procedures either did not reflect actual practice or did not describe in enough detail RTA’s process for confirming an applicant firm’s eligibility.

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

Advisory Comment

It is an effective practice for LAUCP to include accurate references to DBE program 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. An advisory comment, however, is made regarding this requirement.

In its 2020 DBE Program Plan, RTA included the following statement: “The certification standards of Subpart D of Part 26 as applied by the Louisiana Department of Transportation and Development are utilized to certify DBE firms to participate on DOT assisted projects at RTA.” RTA further states in its DBE Program Plan that “certification decisions will be made based on the facts as a whole.” During the site visit, RTA confirmed it bases all certification decisions on the certification standards described in 49 CFR Part 26 Subpart D, without

exception, and places no more burden on members of one group than members of another group. RTA also confirmed it did not receive an application for certification during the review period for which it had reason to question the owner's group membership. Although RTA was aware of the requirement to provide the applicant with a written explanation of its reasons for questioning the applicant's group membership, it did not explicitly document that it provided the required written explanation in its DBE Program Plan or in any other procedural document.

RTA required firm owners to apply for certification using the certification application provided and required by USDOT, which includes an Affidavit of Certification that the presumptively disadvantaged owner is socially and economically disadvantaged. RTA confirmed the owners' certification when meeting with owners during the site visit. If RTA had a well-founded reason for questioning the owners' group membership, it would explain as much in a follow-up letter to the applicant firm. Although RTA could verbally describe its process for meeting the requirement in 49 CFR §26.63, it did not document its process in its DBE Program Plan or other procedural document.

Advisory Comment

It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR §26.63, and to implement said requirements.

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 this requirement.

In its 2020 DBE Program Plan, RTA included the following statement: "The certification standards of Subpart D of Part 26 as applied by the Louisiana Department of Transportation and Development are utilized to certify DBE firms to participate on DOT assisted projects at RTA." RTA did not more specifically address in its procedures how it complied with the requirement to enforce business size standards. RTA included in its DBE Program Plan a list of steps it minimally takes in determining certification decisions, stating that the list is not inclusive of all the steps it might take when reviewing applications. Included in the list were the following two steps:

- *Obtain current personal and company financial statements and tax returns for the disadvantaged individuals in order to determine net worth.*
- *Obtain tax returns for both the organization and individual owners for the most current three years.*

During the site visit, RTA explained that for all applicants it confirmed that SBA business size standards (by NAICS code) were met by checking the size of the applicant firm against the size standards published by SBA. RTA demonstrated the resource it uses to make its determinations and provided email messages between its DBELO and LAUCP confirming firms met the SBA NAICS code size standards before being added to the LAUCP DBE Directory. In addition, RTA explained how it evaluated applicant firms' financial statements and tax return information to determine whether applicant firms exceeded the average three-year limit of \$23.98 million. RTA did not include these details in its DBE Program Plan or other procedural document.

A review of RTA's certification files confirmed it only certified firms that met the business size standards described in 49 CFR §26.65.

Advisory Comment

It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR §26.65, and to implement said requirements.

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. An advisory comment, however, is made regarding this requirement.

Included as an attachment to the LAUCP Agreement is Exhibit A LAUCP Certification Plan Process, which describes, among other things, the LAUCP certification processes applicable to all LAUCP certifying partners. Exhibit A, Section VII Certification Standards includes the following statement: "The major requirements for certification may be found in 49 CFR 26,

Subpart D”; however, there is no explanation of how LAUCP certifying partners confirm applicant firm owners are members of one of the groups rebuttably presumed to be socially and economically disadvantaged.

RTA states the following in its 2020 DBE Program Plan: “The certification standards of Subpart D of Part 26 as applied by the Louisiana Department of Transportation and Development are utilized to certify DBE firms to participate on DOT assisted projects at RTA. To be certified as a DBE, a firm must meet all certification eligibility standards. RTA will make all certification decisions based on the facts as a whole.” Although RTA made summary representations that it would comply with all required certification standards (including Burden of Proof) in its procedural documents, it did not document in detail how it complied with those standards in its procedural documents.

As reported in Section 6.1(B) of this report, RTA required firm owners to apply for certification using 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 was, in fact, socially and economically disadvantaged. If RTA received an application from a firm owned by an individual who was not a member of one of the groups rebuttably presumed to be socially and economically disadvantaged, it required the firm to present evidence of its social and economic disadvantage (see discussion in Section 6.3(D)).

Advisory Comment

It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR §§26.5, 26.61, and 26.67(a)(1), and to implement said requirements.

(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, a deficiency was found with this requirement.

In its 2020 DBE Program Plan, RTA states the following:

RTA will require all disadvantaged owners of applicants and of currently certified DBEs whose eligibility under 49 CFR Part 26 we review to submit a statement of personal net worth. PNW statement will be required at the time of the DBE firm's application and annual review.

During the site visit, RTA provided documentation confirming it used the current PNW form in 49 CFR Part 26 Appendix G. The PNW form used by RTA contained OMB Approval No. 2105-0510 and an expiration date of October 31, 2021.

RTA also states in its DBE Program Plan that it collected and reviewed the firm owners' personal financial statements and personal tax return information, as well as the firm's business tax information, to confirm the accuracy of the information on each applicant's PNW form. The DBE Program Plan includes the following statement:

Each firm desiring to be certified as a DBE must complete and submit a FORM 14-DBE Personal Net Worth Affidavit to the DBE office. An application will not be considered complete unless the FORM 14 is properly notarized and all required supporting documents are submitted. If an applicant does not submit all requested documents, the file may be closed and returned to the applicant upon notice by the DBELO.

However, three of the certification files reviewed did not contain the required tax returns. The certification file for BuildKo Construction Group, LLC did not contain business or personal tax returns (the certification file contained a confirmation that the firm had filed a tax filing extension, but it did not contain the filed tax return), and the files for Jake's Transportation, LLC and KV Workspace, LLC did not contain the owners' personal tax returns.

During the site visit, RTA explained that a certification file checklist was previously developed but had not been used consistently by former DBE program staff. The current DBELO recently implemented the use of the certification file checklist to ensure all required documentation is

received and reviewed before certification decisions are made. The current DBELO provided examples of completed certification file checklists on site.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, RTA must submit the following to the FTA Regional Civil Rights Officer (RCRO):

- Documentation confirming that BuildKo Construction Group, LLC, Jake's Transportation, LLC, and KV Workspace, LLC meet PNW standards.
- An updated DBE Program Plan that describes in detail RTA's procedures for ensuring all requested certification information is received and reviewed. RTA's updated procedures must describe its use of its certification file checklist.

(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.

In its 2020 DBE Program Plan, RTA addresses how it rebuts the presumption of economic disadvantage when an individual applying for certification has an existing net worth exceeding \$1.32 million. However, RTA does not document in detail its procedures for evaluating and making certification decisions when applicants do not exceed the PNW threshold but demonstrate an ability to accumulate substantial wealth, per the requirements in 49 CFR 26.67(b)(i) and (ii). During the site visit, the review team discussed the requirement to evaluate

an individual's ability to accumulate substantial wealth when making determinations of economic disadvantage. RTA's DBELO was aware of the requirement but had not processed an application for a firm owner that demonstrated such an ability.

A review of selected certification files confirmed there was no evidence that any of the applicants' PNW was above \$1.32 million or that they were able to accumulate substantial wealth, as described in 49 CFR 26.67(b)(i) and (ii).

Advisory Comment

It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR 26.67(b)(i) and (ii), and to implement said requirements.

(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.

During the site visit, RTA provided an example of its handling of an application submitted by an owner of a firm who was not in one of the groups rebuttably presumed to be socially and economically disadvantaged, but who claimed disadvantage based on his disability. RTA provided a copy of a letter sent to the applicant in which it identified the reasons it questioned the applicant's social and economic disadvantage for the purposes of participation in its DBE program and requested information from the applicant to support his claim of social and economic disadvantage. After receiving additional information from the applicant, RTA determined that, although the applicant was disabled, when it considered all the information provided, the applicant's disability did not have a "negative impact on entry into or advancement in the business world." The applicant appealed RTA's initial denial to USDOT, which ultimately upheld RTA's decision to deny the application.

This example demonstrated that RTA processed applications from firms owned by individuals who were not members of groups rebuttably presumed to be socially and economically disadvantaged in accordance with 49 CFR §§26.5, 26.61, and 26.67(a)(1) requirements. However, RTA should update its written procedures to include a more detailed description of how it meets these requirements. RTA's updated written procedures should describe in detail how it incorporates the guidance in 49 CFR Part 26 Appendix E when evaluating applications from firm owners who are not members of a group rebuttably presumed to be socially and economically disadvantaged.

Advisory Comment

It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR §§26.5, 26.61, and 26.67(a)(1), and to implement said requirements.

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.

Discussion

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

In its 2020 DBE Program Plan, RTA states the following:

The RTA will certify only those businesses which are at least fifty-one percent (51%) owned and controlled by persons who are socially and economically disadvantaged. The DBE is an independent business where ownership and control by minorities or women are real, substantial and continuing. The DBE owners must share in the risks and profits commensurate with their ownership interests. The DBE owners must also possess the power to direct or cause the direction of the day-to-day management and make major decisions of the firm. There can be no restrictions in the bylaws or articles of incorporation or other documents, which prevent the DBE owners from making a business decision without the cooperation or vote of the non-DBE owners. If non-DBE members of the firm are disproportionately responsible for the operation of the firm, then the firm cannot be considered as or certified as a DBE.

The ownership determination procedures described in RTA's DBE Program Plan included the following relevant certification actions:

- *Site Visit - Perform a site visit to the offices of the firm and to any job sites on which the firm is working at the time of the eligibility investigation. Principals of the applicant firm must be interviewed.*

- *Obtain the resumes and work histories of the principal owners of the firm and personally interview these individuals.*
- *Analyze the ownership of stock in the firm if it is a corporation.*
- *Obtain organizational documents.*
- *Obtain status of marital regime and division of property statement.*
- *Obtain statements of initial contributions.*

All certification files reviewed on site contained documentation confirming RTA made ownership determinations in accordance with the requirements described in 49 CFR §26.69(a-j). 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.

6.5 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 this requirement. An advisory comment, however, is made regarding this requirement.

In its 2020 DBE Program Plan, RTA states the following:

The RTA will certify only those businesses which are at least fifty-one percent (51%) owned and controlled by persons who are socially and economically disadvantaged. The DBE is an independent business where ownership and control by minorities or women are real, substantial and continuing. The DBE owners must share in the risks and profits commensurate with their ownership interests. The DBE owners must also possess the power to direct or cause the direction of the day-to-day management and make major decisions of the firm. There can be no restrictions in the bylaws or articles of incorporation or other documents, which prevent the DBE owners from making a business decision without the cooperation or vote of the non-DBE owners. If non-DBE members of the firm are disproportionately responsible for the operation of the firm, then the firm cannot be considered as or certified as a DBE.

RTA's ownership determination procedures described in its DBE Program Plan included the following relevant certification actions:

- *Site Visit - Perform a site visit to the offices of the firm and to any job sites on which the firm is working at the time of the eligibility investigation. Principals of the applicant firm must be interviewed.*
- *Obtain the resumes and work histories of the principal owners of the firm and personally interview these individuals.*
- *Obtain or compile a list of equipment owned or available to the firm.*
- *Analyze the ownership of stock in the firm if it is a corporation.*
- *Obtain organizational documents.*

During the site visit, RTA stated that in addition to the actions listed above, it conducts interviews with applicant firm staff to better ascertain the owners' control over and involvement with the management of the firm. Additionally, RTA reviews bank documentation to confirm whether the owners of the firm are named as responsible parties on the firm's bank account(s) and whether the owners have check-signing authority. RTA should update its DBE Program Plan to include the additional steps it takes to confirm who is in control of the applicant firm.

A review of selected certification files confirmed RTA implemented the procedures described in its DBE Program Plan and during the site visit. RTA's certification files contained site visit checklists and notes documenting its evaluation of firm ownership and control. Other information included in the certification files were organization documents, owners' resumes, staff interview notes, and lists of equipment owned by the applicant firms (if any).

Advisory Comment

It is an effective practice to have detailed written procedures that adequately address the requirements in 49 CFR §26.71(a-q), and to implement said requirements.

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 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 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.

Discussion

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

In its 2020 DBE Program Plan, RTA states, “RTA will adhere to the certification standards of 49 CFR §26.85 for firms currently certified in their home state at the time of their application submission to the RTA.” During the site visit, the review team discussed the different options in 49 CFR §26.85 available to RTA when processing interstate applications. For example, the regulations allow UCPs at their discretion to (1) accept the applicant firm’s home state certification and certify the firm, or (2) require the applicant firm to provide a complete copy of the applicant firm’s home state certification file and other information described in 49 CFR §26.85(C)(1-4). RTA confirmed during the site visit that it processed interstate applications in accordance with option 1. Accordingly, RTA should update its DBE Program Plan with detailed written procedures that reflect actual practice.

The certification files for all three of the interstate applications received by RTA during the review period were reviewed. All certification files reviewed contained a copy of the applicant’s home state certification letter and a current notarized self-certification of protected group membership. In addition, all interstate applicants were listed in their home state DBE directories. RTA certified all the applicants within 60 days. Although its procedures were not documented in

detail in its 2020 DBE Program Plan, RTA was accepting and processing interstate applications in a manner consistent with the requirements of 49 CFR 26.85.

Advisory Comment

It is an effective practice to have detailed written policies and procedures that reflect actual practice and address the requirements in 49 CFR §26.85.

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.

In the *Procedures for Certification Decision 26.83 & 26.85* section of its 2020 DBE Program Plan, RTA included a subsection with the heading “Special Requirements” and the subheading “Dealer, Material Suppliers and Manufacturers.” The subsection included the following:

Commercially useful function, normally a counting concept will be considered by the RTA in administering contracts to evaluate the firm's method of supplying materials. In accordance with the requirements of commercially useful function as defined in 49 CFR 26.55, standard industry practices will be taken into account when considering a firm's method of supplying products. However, when standard industry practices violate DBE program requirements, DBE program requirements will prevail. It is the responsibility of the RTA to determine whether a DBE is performing a commercially useful function.

During the review, RTA confirmed it did not consider commercially useful function when certifying DBEs and thought the language was included by mistake. Accordingly, RTA should remove the commercially useful function language from the certification procedures section of its 2020 DBE Program Plan. A review of selected certification files confirmed there was no documentation relating to commercially useful function.

Advisory Comment

It is an effective practice to maintain updated written procedures that reflect current and actual practice.

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 deficiencies were found with this requirement. Advisory comments are also made regarding the requirement.

The LAUCP Agreement was approved by USDOT on November 2, 2004 and included the signatures of the UCP certifying and noncertifying members, including RTA, in *Attachment B* of the Agreement. As described in Section 4.1 of this report, the Agreement established the composition and responsibilities of an Executive Committee. The Agreement also included *Attachment A Louisiana Certification Plan and Process*, which included general certification procedures all LAUCP certifying agencies were to follow.

The review team identified the following deficiencies with the LAUCP Agreement or implementation of the terms in the Agreement:

1. The LAUCP Agreement includes unclear and inaccurate language regarding the certifying partners' responsibilities for updating the LAUCP DBE Directory. The Agreement states, "Each Certifying Agency will update all information on the files that it processes although DOTD will be responsible for hosting the information." The Agreement further states, "Each certifying agency will be able to access its files for updates and posting of real time information, and will be able to access all files for status review." During the site visit, RTA confirmed that LAUCP certifying agencies do not have direct access to the LAUCP DBE Directory for the purposes of updating and posting real-time information. Instead, LAUCP certifying agencies transmit certification information to the LADOTD via email, and LADOTD updates and posts the information to the directory on the certifying partners' behalf.
2. The LAUCP Agreement states that the LAUCP Executive Committee will "monitor and evaluate performance levels for each Certifying Agency on at least a semi-annual basis." No documentation or other information was provided during the site visit describing the LAUCP's monitoring process or confirming that monitoring occurred.
3. The LAUCP Agreement states that the LAUCP Executive Committee "shall meet quarterly or when circumstances warrant a special meeting." During the site visit, RTA provided copies of LAUCP Executive Committee meeting notices, but confirmed that it did not attend the meetings as required due to scheduling conflicts.

In addition to the three deficiencies concerning the LAUCP Agreement described above, the review team noted the following inaccuracies in the LAUCP Agreement and recommends updates be made to correct these inaccuracies:

1. The LAUCP Agreement includes misleading language regarding timeframes for communicating certification decisions to applicants. The Agreement states, "Decisions will be communicated to applicants and recipients within fourteen calendar days via U.S. mail." The agreement should be updated to clarify that applicants will be notified within 14 days of certification decision. Certification decisions must be made within 90 days from receipt of all required information, and the notification to applicants should be made within the 90-day timeframe unless the certifying agency issues a 60-day extension as provided for in 49 CFR §26.83(k). It was noted that *Attachment A* of the LAUCP Agreement correctly addressed the 90-day certification decision requirement.
2. In its 2020 DBE Program Plan, RTA identifies the LAUCP certifying members as "The New Orleans Metropolitan Certifying Agency (NOMCA), consisting of the RTA, the Orleans Levee District and the New Orleans Regional Transit Authority; and the Louisiana Department of Transportation & Development (LADOTD)." The LAUCP Agreement does not include or otherwise reference NOMCA. During the site visit, RTA confirmed this was outdated language from a previous DBE Program Plan and should be updated to reflect the current LAUCP membership.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, RTA must submit the following to the FTA RCRO:

- A plan to coordinate with LADOTD to clarify the process for updating the LAUCP DBE Directory. The plan must address how the process reflects actual practice.
- LAUCP procedures for conducting performance monitoring of certifying agencies.
- An explanation of how RTA will ensure it is represented at LAUCP Executive Committee meetings.

Advisory Comments

It is an effective practice to eliminate language in the LAUCP Agreement that could lead to procedural misunderstanding. It is also an effective practice to ensure RTA's procedural documents are not in conflict with LAUCP procedures.

(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, a deficiency was found with this requirement. An advisory comment was also made regarding the requirement.

At the time of the site visit, the LAUCP DBE Directory contained 1,462 DBEs, 115 of which were certified by RTA. LADOTD, the lead agency in the LAUCP, is responsible for maintaining the LAUCP DBE Directory. Information on the certification status of firms is provided by RTA and the other LAUCP certifying members to LADOTD via the UCP Entry Form (UEF). The UEF requires the certifying member to indicate if the information pertains to a new or updated entry, or a removal request. The UEF also requires certifying members to provide all the information required by 49 CFR §§23.31, 26.31, and 26.81(g). When taking a certification action, RTA transmits the completed UEF to LADOTD via email. After receiving the UEF, LADOTD enters the UEF information into the DBE Directory. When there was a change in a DBE's status or business information, RTA was responsible for providing LADOTD with updates.

Attempts were made to contact a random sampling of DBE's certified by RTA from the LAUCP DBE Directory. Three of the DBEs selected were G Temple Construction, Jake's Transportation, and YKM Consulting. The phone numbers for all three firms included in the LAUCP DBE Directory were out of service. Active phone numbers for G Temple Construction and YKM Consulting were found on the Internet. A Google Internet search for Jake's Transportation returned information stating that the company was permanently closed. RTA reported the company was active.

The online version of the directory could be searched by company name, certifying agency, parish, city, type of service, and type of work (including NAICS code). The directory could be printed by the website user, and per the LAUCP Agreement, LADOTD printed the directory monthly.

Although RTA and LADOTD recorded whether a firm was a DBE or an ACDBE, the online DBE directory did not specifically identify firms as DBE or ACDBE.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, RTA must submit to the FTA RCRO confirmation that the certification status and contact information for the firms it has certified in the LAUCP is current.

Advisory Comment

It is an effective practice to include all required information in all versions of the LAUCP DBE Directory.

6.9 Entering Information into USDOT's Ineligibility Database

Basic Requirement (49 CFR §26.85(f))

If the UCP denies a firm's application, rejects the application of a firm certified in State A or any other State in which the firm is certified, or decertifies 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 USDOT Department of Civil Rights (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 deficiencies were found with this requirement.

Neither RTA nor LADOTD, the entity responsible for maintaining the LAUCP DBE Directory, updated the DOCR Ineligibility Determination Online Database, as required. RTA reported two denials and seven decertifications during the review period. None of the denials or decertifications reported by RTA were found in the DOCR Ineligibility Determination Online Database when searched by the review team. During the site visit, RTA also confirmed that it was not reporting denials to LADOTD. RTA was also not checking the DOCR Ineligibility Determination Online Database as a part of its application review and certification process, as required.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, RTA must submit the following to the FTA RCRO:

- Documentation confirming all firms it has denied or decertified have been entered into the DOCR Ineligibility Determination Online Database.

- An updated DBE Program Plan that includes procedures for (1) updating the DOCR Ineligibility Determination Online Database, as required, and (2) checking the DOCR Ineligibility Determination Online Database before making certification decisions.

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.

RTA required all firms to apply for DBE certification using the USDOT Uniform Certification Application. The current application (OMB Approval No: 2105-0510, expiration date: 10/31/2021) was made available for download from the LAUCP website. Per the on-site certification file review, the required application was used in all cases.

(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.

In its 2020 DBE Program Plan, RTA describes its procedures for conducting on-site visits for every noninterstate application. RTA performs on-site visits to every applicant firm's primary place of business and to applicant firm job sites, as applicable. During on-site visits, RTA interviews all firm owners and select staff. During the site visit, RTA provided a sample of the on-site visit inspection form used by interviewers when conducting on-site visits. Visits were conducted by two RTA certification staff interviewers, and each interviewer completed separate forms summarizing the results of the on-site visit. Completed forms are shared with the owners interviewed, who are asked to concur with the results of the on-site visit by signing the interview forms.

Completed on-site visit inspection forms were in 14 of the 18 certification files reviewed. Three of the files missing on-site inspection forms were older applicant files created prior to RTA implementing the use of its on-site inspection form. The site visits were all conducted within 30 days of receipt of the firms' applications. The interview forms were completed in accordance with RTA's procedures. All the required signatures were noted. The on-site visits were conducted in accordance with 49 CFR §26.83.

(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 deficiencies were found with this requirement.

Although RTA made summary representations that it would comply with all required certification procedures in its 2020 DBE Program Plan, it lacked detailed written procedures for satisfying the 30-day notification requirement. Of the 18 certification files reviewed on site, only one included documentation confirming RTA made the required notification. During the site visit, RTA explained that notifications were sent via email, but the messages were not printed and kept in the certification files. RTA also stated that if additional information was not required, an email may not have been sent. However, messages were sent when additional information was required. During the site visit, RTA was able to retrieve and provide examples of notices sent to applicant firms requesting additional information.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, RTA must submit the following to the FTA RCRO:

- An updated DBE Program Plan that includes both providing 30-day notifications, as required, and documenting the 30-day notification in all certification files.
- An updated certification file checklist that records the occurrence of the 30-day notification.

(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.

Consistent with required LAUCP procedures, RTA states in its 2020 DBE Program Plan that “decisions on applications for certification will be made within 90 days of receiving a complete application. The RTA may extend this time period once, for an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.”

Of the 18 certification files reviewed, a letter notifying the applicant of the decision regarding their certification was included in every file. All certification determination letters were issued within the 90-day period following the receipt of complete applications. Certification letters welcomed newly certified DBE firms to the DBE program and identified the NAICS codes for which the firm was certified and other program information. Denial letters included detailed reasons for the denial decision and instructions on how the applicant firm could appeal the decision. RTA demonstrated that it issued 90-day notification letters in accordance with 49 CFR §26.83(k).

(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 deficiencies were found with this requirement.

Consistent with required LAUCP procedures, RTA states the following in its 2020 DBE Program Plan:

Once certified, a DBE shall update its submission every year by submitting a FORM 15 – Affidavit of No Change, and current financial statement and tax returns. At any time that a change occurs in the ownership or control criteria of 49 CFR Part 26; and/or the firm's ability to meet size and disadvantaged status, the DBE shall promptly notify the DBELO in a written affidavit and submit a new Schedule A. Failure to submit affidavits and

notices of "no change" prior to the firm's expiration will result in the initiation of decertification procedures.

Four of the of the nine certification files reviewed included current Annual No Change Affidavits.

Prior to October 2019, RTA had not consistently enforced Annual No Change Affidavit requirements. RTA's current (as of October 2019) DBE Compliance Officer/DBELO has begun notifying certified firms of the requirement to submit Annual No Change Affidavits. During the site visit, the DBE Compliance Officer/DBELO provided examples of letters sent to certified firms in early March 2020 notifying them that if they did not submit the required Annual No Change Affidavit within 14 days, RTA would initiate decertification procedures. The DBE Compliance Officer/DBELO provided a status report used to track the status of the DBEs' annual affidavit compliance. At the time of the site visit, RTA had not yet initiated any decertifications.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, RTA must submit the following to the FTA RCRO:

- A status report of all current DBE firms not in compliance with Annual No Change Affidavit requirements and RTA's plan to correct the noncompliance.
- An updated DBE Program Plan that includes detailed written procedures for ensuring compliance with Annual No Change Affidavit requirements. These procedures must describe how RTA notifies DBEs in advance that Annual No Change Affidavits are due, explain how it tracks DBE Annual No Change Affidavit compliance, and describe the enforcement actions it takes to correct noncompliance.

6.11 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.

LAUCP procedures required certifying members to provide a formal written notice to applicants denied certification outlining the reasons for the denial, referencing evidence from the applicant

file supporting each reason for the denial, and referencing the specific applicable regulations for the denial. The denial could be appealed by the applicant firm within 90 days of the date of the decision. RTA did not address how it satisfied the requirements for denials in its 2020 DBE Program Plan, except to state, "If certification is denied, the applicant may not reapply with the RTA until at least one year from the date of a final decision on the initial certification application. The applicant may make an appeal to DOT."

In addition to not including detailed written denial procedures in its DBE Program Plan, RTA did not report denials to LADOTD so it could update the LAUCP DBE Directory, nor did RTA report denials in the DOCR Ineligibility Determination Online Database. This deficiency is addressed in Section 6.9 of this report.

Three of the 18 certification files reviewed on site were denials. Compliant denial letters were included in each file. The letters specified the reason for the denial, referenced the applicable regulation, and referenced evidence from the application submitted or the on-site visit conducted. The denial letters also included directions for filing an appeal and specified when the firm could reapply. The letters complied with LAUCP requirements and 49 CFR §26.86(a).

(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.

Discussion

During this review deficiencies were found with this requirement.

Consistent with LAUCP requirements and procedures, RTA included the following in its DBE Program Plan:

Whenever the RTA has reason to believe that a firm with a current certification is no longer eligible, the firm will be afforded due process prior to deciding on its eligibility.

Decertification may be initiated by a complaint filed by a third party or by the RTA.

Procedures will be consistent with 49 CFR 26.87, and will minimally include the following:

- 1. A letter will be sent to the firm, stating that the RTA is contemplating decertification, with a brief description of the reasons for the proposed action.*

2. *The firm will be given an opportunity to respond in writing to present information and arguments. At the request of the firm, an informal hearing will be convened. A firm remains an eligible DBE during the pendency of RTA's decertification proceeding.*

During the site visit, certification files for three firms decertified within the last 12 months were reviewed. None of the certification files reviewed contained letters sent to the firms notifying them of RTA's intention to decertify or letters documenting final decertification, per RTA's procedures and as required by 49 CFR §26.87. RTA stated that it often communicates with firms via email and does not consistently include copies of email correspondence in the certification files. RTA must fully document decertification proceedings in its certification files. RTA must also ensure that its procedures reflect actual practice.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, RTA must submit the following to the FTA RCRO:

- Documentation confirming all firms decertified by RTA in the last three years have been notified, as required.
- An updated DBE Program Plan that includes detailed procedures for ensuring decertification requirements are met and reflect actual practice. Updated procedures must require that all written communication between RTA and DBEs regarding decertification are documented in the certification file.

(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, no deficiencies were found with this requirement.

RTA's procedures for mandatory summary suspension described in its 2020 DBE Program Plan were consistent with the requirements in 49 CFR §26.88(a) and §26.87(d). RTA did not have a circumstance for which mandatory summary suspension was required during the review period. During the site visit, RTA explained that if it became aware an owner whose ownership and control of the firm were necessary to a firm's certification died or was incarcerated, then RTA would immediately suspend the DBE's certification per the provision described in 49 CFR §26.88(a) and in accordance with §26.87(d).

(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, no deficiencies were found with this requirement. Advisory comments, however, are made regarding the requirement.

RTA did not address the optional summary suspension provision in its 2020 DBE Program Plan or in any other written procedures. RTA did not use this optional enforcement action during the review period. Per the discussion in Section 6.10(E) of this report regarding DBE noncompliance with Annual No Change Affidavit requirements, the review team discussed the use of the optional summary suspension provision with RTA as an enforcement action to facilitate compliance. RTA had not previously employed summary suspension provisions with firms that did not comply with Annual No Change Affidavit requirements.

Advisory Comments

It is an effective practice to use the optional summary suspension provision in 49 CFR §26.88(b) to address issues of DBE firm noncompliance. It is also an effective practice to have detailed written procedures for optional summary suspension.

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

When DOOCR 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, no deficiencies were found with this requirement.

RTA included detailed procedures for complying with the appeals process requirements described in 49 CFR §26.89 in its 2020 DBE Program Plan. During the site visit, the review team discussed two applications that were initially denied by RTA and subsequently appealed to the USDOT DOOCR by the applicants. In both cases, RTA complied with DOOCR requests for information, as required.

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 2 CFR parts 180 and 1200.

Discussion

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

RTA includes the following DBE enforcement actions in its DBE Program Plan:

- *Breach of contract action, pursuant to the terms of the contract*
- *Breach of contract action, pursuant to Louisiana State Code*
- *Suspension or debarment proceedings pursuant to 49 CFR Part 26*
- *Enforcement action pursuant to 49 CFR Part 31*
- *Prosecution pursuant to 18 USC 1001*

During the site visit, RTA confirmed that during the review period, it had no circumstances that required the use of any of the enforcement actions listed above.

(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, no deficiencies were found with this requirement.

Consistent with LAUCP requirements and procedures, RTA included the following in its DBE Program Plan:

The RTA shall safeguard from disclosure to third part[ies] information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. La.R.S. 42:4.1 et seq; La.R.S. 44:1 et seq.

Notwithstanding any provision of Federal or state law, the RTA shall not release any 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 applications for DBE certification and supporting information. However, the RTA will transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

During the site visit, RTA confirmed that it did not receive third-party requests for DBE information during the review period, except from DOOCR in connection with certification appeals filed by two applicants.

(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. 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. (49 CFR §26.73(c)).

Discussion

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

Consistent with LAUCP requirements and procedures, RTA included the following in its 2020 DBE Program Plan:

All participants in the Department's 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) shall cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be grounds for appropriate action against the party involved (e.g., with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment).

Per Section 6.11(D) of this report, RTA was advised to take appropriate enforcement action against DBEs that do not cooperate fully with Annual No Change Affidavit requirements and related requests by RTA.

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 deficiencies were found with this requirement.

RTA did not include procedures and requirements for certification-related record keeping in its 2020 DBE Program Plan. Several of RTA's certification files were missing Annual No Change Affidavits, personal and business income tax returns, 30-day notification letters, and required decertification correspondence. During the site visit, RTA explained that it often corresponded with applicants and DBEs via email. However, RTA was not including email correspondence in certification files, sometimes resulting in incomplete application package documentation. RTA must ensure that it keeps all required application information in its certification files and update its DBE Program Plan to include a detailed description of its certification file maintenance and record-keeping procedures.

During the site visit, RTA confirmed all certification files were retained for a minimum of three years.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, RTA must submit to the FTA RCRO an updated DBE Program Plan that includes detailed procedures implemented to ensure compliance with record-keeping requirements described in 49 CFR §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

As the lead agency in LAUCP, LADOTD was responsible for submitting the reports described in 49 CFR §26.11(e). Therefore, this requirement does not apply to RTA.

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.

Discussion

During this review, no deficiencies were found with this requirement. Advisory comments, however, are made regarding this requirement.

RTA did not address training requirements and related procedures in its 2020 DBE Program Plan. At the time of the site visit, RTA’s DBE Compliance Officer/DBELO was the only internal staff responsible for certifying DBEs. During the site visit, the DBE Compliance Officer/DBELO provided a copy of the National Highway Institute Training Certificate she received on October 18, 2019.

Advisory Comments

It is an effective practice to have a detailed description of how DBE certification requirements are met in DBE certification procedures. It is also an effective practice to ensure all third-party contractor staff involved with DBE certification have complied with DBE certification training requirements, as applicable.

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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	G. Temple Construction	X	X	X	N/A	X/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	X
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Carlos Sosa, LLC	X	X	X	O	X/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	X
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal/Decertification	Francis Financial Group	N/A	X	X	O	X/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	O	N/A	O
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Louisiana Food Service	X	X	X	N/A	X/X	X	X	X
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	X
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate Certification	Mjach Design, LTD	N/A	N/A	N/A	O	N/A	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N/A	N/A	X	N/A	N/A	N/A	N/A	X
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
		X	X	X	N/A	O/X	X	N/A	N/A

Initial Certification <1 year	Jakes Transportation, Inc.	Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	Michelle Diaz-CPA	X	O	X	O	X/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		O	X	N/A	X	X	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal/ Decertification	RS Security Inc.	N/A	X	X	O	X/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		O	X	N/A	X	X	O	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification Denial	Legacy Professional Services	X	X	X	X	X/X	X	X	X
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	X	X	X	N/A	X	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate Certification	Texlacon, Inc.	N/A	N/A	N/A	O	N/A	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	N/A	X	N/A	N/A	N/A	N/A	X
File Type	Firm Name	USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Initial Certification <1 year	Sean M. Bruno	X	X	X	N/A	X/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Existing Certification >1 year	KV Workplace, LLC	X	X	X	O	O/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		O	X	N/A	X	X	N/A	N/A	X

		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Removal/ Decertification	Sure Temps, LLC	X	X	X	O	X/X	X	N/A	X
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	O	N/A	N/A
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
Interstate Certification	K&J Safety and Security Consulting Services Inc.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	N/A	N/A	N/A	N/A	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
(Additional File selected on site)	Tidewater	X	X	X	N/A	X/X	X	X	X
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
(Additional File selected on site)	Blue Eagle, LLC	X	X	X	N/A	X/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	X
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
(Additional file selected on site)	Buidko Construction Group, LLC	X	X	X	N/A	O/O	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		O	X	N/A	X	X	N/A	N/A	O
		USDOT Form	Site Visit	PNW	No Change	Per/Bus Tax	Streamline Application	Denial Letter	Appeal Letter
(Additional file selected on site)	Lucas Construction Corp.	X	X	X	N/A	X/X	X	N/A	N/A
		Cert. Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		X	X	N/A	X	X	N/A	N/A	N/A

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies / Advisory Comments	Corrective Action(s)	Response Days/Date
1. Group Membership A) Burden of Proof	26.61	ND, AC	It is an effective practice for LAUCP to include accurate references to DBE program regulations.		
B) Additional Evidence of Group Membership	26.63	ND, AC	It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR §26.63, and to implement said requirements.		
2. Business Size	26.65	ND, AC	It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR §26.65, and to implement said requirements.		
3. Social/Economic Disadvantage A) Presumption of Disadvantage	26.67	ND, AC	It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR §§26.5, 26.61, and 26.67(a)(1), and to implement said requirements.		
B) Personal Net Worth	26.67	D	Certification files missing personal and/or business income tax returns	RTA must submit the following to the FTA RCRO: Documentation confirming that BuildKo Construction Group, LLC, Jake's Transportation, LLC, and KV Workspace, LLC meet PNW standards.	60 Days

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies / Advisory Comments	Corrective Action(s)	Response Days/Date
C) Rebutting the Presumption of Economic Disadvantage	26.67	ND, AC	It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR 26.67(b)(i) and (ii), and to implement said requirements.	An updated DBE Program Plan that describes in detail RTA's procedures for ensuring all requested certification information is received and reviewed. RTA's updated procedures must describe its use of its certification file checklist.	
D) Individual Determinations of Social/Economic Disadvantage	26.67	ND, AC	It is an effective practice to have detailed written policies and procedures that adequately address the requirements in 49 CFR §§26.5, 26.61, and 26.67(a)(1), and to implement said requirements.		
4. Ownership	26.69	ND			
5. Control	26.71	ND, AC	It is an effective practice to have detailed written procedures that adequately address the requirements in 49 CFR §26.71(a-q), and to implement said requirements.		

[illegible]

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies / Advisory Comments	Corrective Action(s)	Response Days/Date
B) UCP Directory	26.31	D	not in conflict with LAUCP procedures. RTA did not maintain current information in the LAUCP DBE Directory for the DBEs it certified.	RTA must submit to the FTA RCRO confirmation that the certification status and contact information for the firms it has certified in the LAUCP is current.	60 Days
		AC	It is an effective practice to include all required information in all versions of the LAUCP DBE Directory.		
9. Entering Information into USDOT's Ineligibility Database	26.85(f)	D	RTA was not entering denials and decertifications in the USDOT Ineligibility Database, as required.	RTA must submit the following to the FTA RCRO: Documentation confirming all firms it has denied or decertified have been entered into the DOCR Ineligibility Determination Online Database. An updated DBE Program Plan that includes procedures for (1) updating the DOCR Ineligibility Determination Online Database, as required, and (2) checking the DOCR Ineligibility Determination Online Database before making certification decisions.	60 Days
10. UCP Procedures					
A) Uniform Certification Application	26.83	ND			
B) On-Site Visits	26.83	ND			

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies / Advisory Comments	Corrective Action(s)	Response Days/Date
C) 30-Day Notification	26.83	D	RTA did not send 30-day notifications when no additional information was required. RTA did not adequately document 30-day notifications in certification files.	RTA must submit the following to the FTA RCRO: An updated DBE Program Plan that includes both providing 30-day notifications, as required, and documenting the 30-day notification in all certification files. An updated certification file checklist that records the occurrence of the 30-day notification.	60 Days
D) 90-Day Determinations	26.83	ND			
E) Annual Updates	26.83	D	RTA did not ensure DBEs complied with Annual No Change Affidavit requirements.	RTA must submit the following to the FTA RCRO: A status report of all current DBE firms not in compliance with Annual No Change Affidavit requirements and RTA's plan to correct the noncompliance. An updated DBE Program Plan that includes detailed written procedures for ensuring compliance with Annual No Change Affidavit requirements. These procedures must describe how RTA notifies DBEs in advance that Annual No Change Affidavits are due, explain how it tracks DBE Annual No	60 Days

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies / Advisory Comments	Corrective Action(s)	Response Days/Date
				Change Affidavit compliance, and describe the enforcement actions it takes to correct noncompliance.	
11. Denials A) Initial Request B) Remove Existing	26.86 26.87	ND D	RTA did not provide documentation confirming it notified DBEs considered for decertification, as required. RTA did not provide documentation confirming it notified DBEs it decertified.	RTA must submit the following to the FTA RCRO: Documentation confirming all firms decertified by RTA in the last three years have been notified, as required. An updated DBE Program Plan that includes detailed procedures for ensuring decertification requirements are met and reflect actual practice. Updated procedures must require that all written communication between RTA and DBEs regarding decertification are documented in the certification file.	60 Days
C) Mandatory Summary Suspension	26.88(a)	ND			
D) Optional Summary Suspension	26.88(b)	ND, AC	It is an effective practice to use the optional summary suspension provision in 49 CFR §26.88(b) to address issues of DBE firm noncompliance. It is also an effective practice to		

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Deficiencies / Advisory Comments	Corrective Action(s)	Response Days/Date
E) Appeals	26.89	ND	have detailed written procedures for optional summary suspension.		
12. Compliance and Enforcement					
A) DBE	26.107	ND			
Enforcement Actions					
B) Confidentiality	26.109	ND			
C) Cooperation	26.109	ND			
13. Record Keeping	26.11(d)	D	RTA's certification files were missing application package documentation.	RTA must submit to the FTA RCRO an updated DBE Program Plan that includes detailed procedures implemented to ensure compliance with record-keeping requirements described in 49 CFR §26.11(d).	60 Days
14. Submitting Reports to USDOT	26.11(e)	NA			
15. Training of Certification Application Review Staff		ND, AC	It is an effective practice to have a detailed description of how DBE certification requirements are met in DBE certification procedures. It is also an effective practice to ensure all third-party contractor staff involved with DBE certification have complied with DBE certification training requirements, as applicable.		

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment.

ATTACHMENT A – FTA NOTIFICATION LETTER TO RTA



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

Alex Z Wiggins
Chief Executive Officer
New Orleans Regional Transit Authority
2817 Canal Street
New Orleans, LA 70119

Dear Mr. Wiggins:

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. New Orleans Regional Transit Authority (NORTA) has been selected for a review of its Unified Certification Program (UCP) to take place March 10–12, 2020.

The purpose of this review will be to determine whether NORTA 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, DC, 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. Central Standard Time on Tuesday, March 10, 2020, to introduce the DMP team and FTA representatives to NORTA. 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 NORTA’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 NORTA must submit to the review team within 30 calendar days of the date of this letter. Please forward these materials to the following contact person:

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

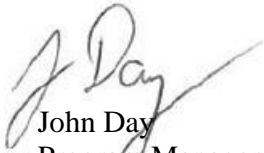
FTA requests your attendance at an exit conference scheduled for 11 a.m. Central Standard Time, on Tuesday, March 10, 2020. The exit conference will afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you and other key staff attend the exit 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 NORTA, will be considered public documents subject to release under the Freedom of Information Act, upon request.

NORTA 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 email 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,

A handwritten signature in dark ink, appearing to read "J. Day", with a stylized flourish extending from the end.

John Day
Program Manager
FTA Office of Civil Rights

Enclosure

cc: Robert C. Patrick, Regional Administrator, FTA Region 6
Selene Faer Dalton-Kumins, Associate Administrator, FTA Office of Civil Rights

Enclosure

The following information must be submitted to the DMP Group, LLC 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 NORTA's Unified Certification Program (which should be signed by all members of the UCP).
3. The certification criteria/guidelines used in determining DBE eligibility.
4. 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.
5. 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 of site visit
 - e) the reasons for denial and/or decertification (e.g., size, PNW, control, etc.)
 - f) whether the denial decision was appealed to the UCP or USDOT
 - g) The result of the appeal
6. A description of NORTA's UCP appeals process(es). List the individuals involved in the appeals process and how they are selected.
7. Any third-party complaints regarding DBE firms certified by NORTA and actions taken to resolve the matter in the past three (3) years.
8. Any Freedom of Information or similar request for certification information in the past three (3) years.
9. Any enforcement action against a DBE firm (e.g., suspension, debarment, etc.) regarding certification in the past three (3) years.
10. Other pertinent information determined by NORTA's staff to illustrate its UCP operations and procedures.

ATTACHMENT B – RTA’S RESPONSE TO DRAFT REPORT

RTA provided no comments to the draft report.



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

Headquarters

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

November 5, 2020

Alex Z. Wiggins
Chief Executive Officer
New Orleans Regional Transit Authority
2817 Canal Street
New Orleans, LA 70119

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

Dear Mr. Wiggins:

This letter concerns the Federal Transit Administration's (FTA) Disadvantaged Business Enterprise (DBE) Specialized Review of the New Orleans Regional Transit Authority's (RTA) Unified Certification Program conducted March 10-12, 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 email your responses to John Day at 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 RTA 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.

Sincerely,

John R. Day
Program Manager
FTA Office of Civil Rights

Enclosure

cc: Gail Lyssy, Regional Administrator, FTA Region 6
Selene Faer Dalton-Kumins, Associate Administrator, FTA Office of Civil Rights